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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Tuesday, October 20, 2009  
9 a.m.–12:30 p.m.

**WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2008–0072]

#### **Emerald Ash Borer; Quarantined Areas; Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the emerald ash borer regulations by adding areas in Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin to the list of areas quarantined because of emerald ash borer. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the emerald ash borer from infested areas in the States of Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin into noninfested areas of the United States.

**DATES:** This interim rule is effective September 21, 2009. We will consider all comments that we receive on or before November 20, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/>

**main?main=DocketDetail&d=APHIS-2008-0072** to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS–2008–0072, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0072.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Chaloux, National Program Coordinator, Emerald Ash Borer Program, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 734–0917.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

Although EAB adults have been known to fly as much as one-half mile from one tree to the next, the pest can also spread when infested nursery trees, logs, or firewood are transported from one region to the next. Ash trees are valuable to the commercial timber industry and are commonly planted in urban areas.

##### **Quarantined Area**

The EAB regulations in 7 CFR 301.53–1 through 301.53–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States. The entire States of Illinois, Indiana, and Ohio and

portions of Maryland and Michigan have already been designated as quarantined areas.

Surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have confirmed new infestations of EAB in Charles County, MD; Delta, Houghton, Keweenaw, Mackinac, and Schoolcraft Counties in the Upper Peninsula of Michigan; Houston County, MN; Wayne County, MO; Allegheny, Beaver, Butler, Lawrence, Mercer, and Mifflin Counties, PA; Arlington, Fairfax, Fauquier, Loudon, and Prince William Counties and the independent Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, VA; Fayette County, WV; and Crawford, Fond du Lac, Ozaukee, Sheboygan, Vernon, and Washington Counties, WI. Officials of the U.S. Department of Agriculture (USDA) and officials of State, county, and city agencies are conducting intensive surveys in and around the infested areas. The States of Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin have quarantined the infested areas and have restricted the intrastate movement of regulated articles from the quarantined areas to prevent the spread of EAB within each State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the spread of EAB to other States.

The regulations in § 301.53–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where EAB has been found by an inspector, where the Administrator has reason to believe that EAB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where EAB has been found.

Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated

articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of EAB.

In accordance with these criteria and the recent EAB findings described above, we are amending § 301.53–3(c) to add Charles County, MD; Delta, Houghton, Keweenaw, Mackinac, and Schoolcraft Counties, MI; Houston County, MN; Wayne County, MO; Allegheny, Beaver, Butler, Lawrence, Mercer, and Mifflin Counties, PA; Arlington, Fairfax, Fauquier, Loudon, and Prince William Counties and the independent Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, VA; Fayette County, WV; and Crawford, Fond du Lac, Ozaukee, Sheboygan, Vernon, and Washington Counties, WI, to the list of quarantined areas.

### Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of EAB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

### Miscellaneous Change

In an editorial change not directly related to this interim rule, we are updating the title of “Subpart—Special Need Requests” (§§ 301.1 through 301.1–3). In § 301.1 of those regulations, paragraph (a) sets out the provisions of section 436 of the Plant Protection Act (7 U.S.C. 7756), which states that a State or political subdivision of a State may not impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this are (1) if the prohibitions or restrictions issued by the State or political

subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary; or (2) if the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment. The regulations in “Subpart—Special Need Requests” provide the criteria to be addressed and process to be followed by States or political subdivisions of States that wish to submit a special need request for consideration. Because those regulations also provide a clear statement as to the preemptive effect of APHIS’ domestic quarantine regulations in part 301, we are changing the title of the subpart to “Subpart—Preemption and Special Need Requests” to make its purpose clearer.

### Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the EAB regulations by adding areas in Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin to the list of areas quarantined because of EAB. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the EAB from infested areas in the States of Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin into noninfested areas of the United States.

We have prepared an economic analysis for this interim rule. The analysis, which considers the number and types of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator’s determination that the rule will not have a significant economic impact on a substantial number of small entities. The economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

### Subpart—Preemption and Special Need Requests

■ 2. The heading of Subpart—Special Need Requests, consisting of §§ 301.1 through 301.1–3, is revised to read as set forth above.

■ 3. In § 301.53–3, paragraph (c) is amended as follows:

■ a. Under the heading Maryland, by adding, in alphabetical order, an entry for Charles County to read as set forth below.

■ b. Under the heading Michigan, under Upper Peninsula, by adding, in alphabetical order, entries for Delta, Houghton, Keweenaw, Mackinac, and Schoolcraft Counties to read as set forth below.

■ c. By adding, in alphabetical order, new entries for Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin to read as set forth below.

### § 301.53–3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

**Maryland***Charles County.* The entire county.

\* \* \* \* \*

**Michigan**

Upper Peninsula: \* \* \*

*Delta County.* The entire county.*Houghton County.* The entire county.*Keweenaw County.* The entire county.*Mackinac County.* The entire county.*Schoolcraft County.* The entire county.

\* \* \* \* \*

**Minnesota***Houston County.* The entire county.**Missouri***Wayne County.* The entire county.

\* \* \* \* \*

**Pennsylvania***Allegheny County.* The entire county.*Beaver County.* The entire county.*Butler County.* The entire county.*Lawrence County.* The entire county.*Mercer County.* The entire county.*Mifflin County.* The entire county.**Virginia***City of Alexandria.* The entire city.*City of Fairfax.* The entire city.*City of Falls Church.* The entire city.*City of Manassas.* The entire city.*City of Manassas Park.* The entire city.*Arlington County.* The entire county.*Fairfax County.* The entire county.*Fauquier County.* The entire county.*Loudon County.* The entire county.*Prince William County.* The entire county.**West Virginia***Fayette County.* The entire county.**Wisconsin***Crawford County.* The entire county.*Fond du Lac County.* The entire county.*Ozaukee County.* The entire county.*Sheboygan County.* The entire county.*Vernon County.* The entire county.*Washington County.* The entire county.

Done in Washington, DC, this 15th day of September 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9-22635 Filed 9-18-09; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. APHIS-2008-0083]

**Gypsy Moth Generally Infested Areas; Illinois, Indiana, Maine, Ohio, and Virginia**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the gypsy moth regulations by adding areas in Illinois, Indiana, Maine, Ohio, and Virginia to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States. **DATES:** This interim rule is effective September 21, 2009. We will consider all comments that we receive on or before November 20, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0083> to submit or view comments and to view supporting and related material available electronically.

- *Postal/Mail/Commercial Delivery:* Please send two copies of your comments to Docket No. APHIS-2008-0083, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket APHIS-2008-0083.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Weyman Fussell, Program Manager,

Gypsy Moth, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236; (301) 734-5705.

**SUPPLEMENTARY INFORMATION:****Background**

The gypsy moth (*Lymantria dispar*) is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

**Designation of Areas as Generally Infested Areas**

Section 301.45-3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45-3(a) by adding 3 counties in Illinois, 1 county in Indiana, 34 townships in Maine, 1 county in Ohio, and 1 county in Virginia to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the States of Illinois, Indiana, Maine, Ohio, and Virginia, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Cook, Du Page, and McHenry Counties, IL; St. Joseph County, IN; several townships in Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties, ME; Morrow County, OH; and Montgomery County, VA. Based on these surveys, we determined that reproducing populations exist at

significant levels in these areas. Eradication of these populations is not considered feasible because these are immediately adjacent to areas current recognized as generally infested and are, therefore, subject to reinfestation.

#### Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This interim rule amends the gypsy moth regulations by adding areas in Illinois, Indiana, Maine, Ohio, and Virginia to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted.

We have prepared an economic analysis for this interim rule. The analysis, which considers the number and types of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator's determination that the rule will not have a significant economic impact on a substantial number of small entities. The economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.45–3, paragraph (a) is amended as follows:

■ a. Under the heading Illinois, by adding, in alphabetical order, entries for Cook County, Du Page County, and McHenry County to read as set forth below.

■ b. Under the heading Indiana, by adding, alphabetical order, an entry for St. Joseph County to read as set forth below.

■ c. Under the heading Maine, by revising the entries for Aroostook County, Franklin County, Penobscot County, Piscataquis County, and Somerset County to read as set forth below.

■ d. Under the heading Ohio, by adding, in alphabetical order, an entry for Morrow County to read as set forth below.

■ e. Under the heading Virginia, by adding, in alphabetical order, an entry for Montgomery County to read as set forth below.

#### § 301.45.3 Generally infested areas.

(a) \* \* \*

#### Illinois

*Cook County.* The entire county.

*Du Page County.* The entire county.

\* \* \* \* \*

*McHenry County.* The entire county.

#### Indiana

\* \* \* \* \*

*St. Joseph County.* The entire county.

\* \* \* \* \*

#### Maine

*Aroostook County.* The townships of Glenwood Plantation, Houlton, New Limerick, Orient, Amity, Cary Plantation, Dyer Brook, Haynesville, Hodgdon, Linneus, Oakfield, Forkstown, Township of T2 R4 WELS, Township of T3 R3 WELS, Township of T4 R3 WELS and Township of TA R2 WELS.

\* \* \* \* \*

*Franklin County.* Eustis area.

\* \* \* \* \*

*Penobscot County.* Pattern area.

*Piscataquis County.* The townships of Shirley, Elliotville, Greenville, T7R9 NWP, Katahdin Iron Works, TBR11 WELS, TBR10 WELS, TAR11 WELS, TAD10 WELS, Veazie Gore, T1R11 WELS, T1R10 WELS, and TrR10 WELS.

\* \* \* \* \*

*Somerset County.* The Township of East Moxie.

\* \* \* \* \*

#### Ohio

\* \* \* \* \*

*Morrow County.* The entire county.

\* \* \* \* \*

#### Virginia

\* \* \* \* \*

*Montgomery County.* The entire county.

\* \* \* \* \*

Done in Washington, DC, this 15th day of September 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–22634 Filed 9–18–09; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301****[Docket No. APHIS–2008–0111]****Pine Shoot Beetle; Additions to Quarantined Areas****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the pine shoot beetle regulations by adding the entire State of Ohio and counties in Maine and Indiana to the list of quarantined areas. We are taking this action following the detection of pine shoot beetle in those areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**DATES:** This interim rule is effective September 21, 2009. We will consider all comments that we receive on or before November 20, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0111> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0111, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0111.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs,

PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a destructive forest pest that attacks both managed and natural stands of pine and especially affects weak and dying trees. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the pest's preferred host. PSB has been reported to also occasionally attack other conifers such as fir (*Abies* spp.) and spruce (*Picea* spp.) at low levels. During “shoot feeding,” young beetles tunnel into the center of pine shoots (usually those from the current year's growth), causing stunted and distorted growth in host trees. Large infestations of PSB typically kill most of the lateral shoots near the tops of trees. In addition, PSB is a vector of several diseases of pine trees.

PSB spreads both through natural means (insect flight and wind dispersal) and artificial means (movement of host material from infested areas to noninfested areas). State and Federal inspectors conduct surveys each year to monitor PSB's natural movement as well as its artificial movement via regulated pine articles such as Christmas trees, nursery stock, logs and lumber with bark, stumps, bark nuggets, and raw material for wreaths and garlands.

Surveys conducted by State and Federal inspectors have revealed that areas in Indiana, Maine, and Ohio are infested with PSB. Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe that PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found. The regulations further provide that less than an entire State will be designated

as a quarantined area only if the Administrator determines that:

1. The State has adopted and is enforcing a quarantine area and regulations that impose restrictions on the intrastate movement of those articles that are equivalent to those imposed by the regulations on the interstate movement of those articles; and

2. The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, we are adding the following counties to the area quarantined for PSB: Greene County, IN; Androscoggin, Cumberland, Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, and York Counties, ME; and the entire State of Ohio (based on the decision by the Ohio Department of Agriculture not to continue enforcement of an intrastate quarantine). The Maine and Indiana departments of agriculture have elected to continue their intrastate quarantines; therefore, quarantined areas in those States are listed at the county level based on reports of the presence of PSB in individual counties.

**Emergency Action**

The rulemaking is necessary on an emergency basis to prevent the spread of PSB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**Executive Order 12866 and Regulatory Flexibility Act**

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

For the purpose of this analysis and in accordance with Small Business Administration (SBA) guidelines, potentially affected entities are

classified within the following industries: Nursery and Tree Production (North American Industry Classification System [NAICS] 111421), Floriculture Production (NAICS 111422), Timber Tract Operations (NAICS 113110), Forest Nurseries and Gathering of Forest Products (NAICS 113210), and Logging (NAICS 113310). The SBA classifies entities in these industry categories as small if they have annual receipts of not more than \$750,000 (NAICS 111421 and 111422), or not more than \$7 million (NAICS 113110 and 113210), or if their employees number not more than 500 (NAICS 113310). In the 12 counties in Maine, there are 778 farms classified under Nursery and Tree Production, Forest Nurseries and Gathering of Forest Products, or Floriculture Production. In Greene County, IN, there are 17 entities which fall under these same NAICS classifications. In the 5 counties in Ohio, a total of 133 entities fall within these NAICS classifications. Most, if not all, of the affected entities in the newly quarantined counties are assumed to be small, given that 98 percent of firms in these industries nationwide have annual sales of less than \$500,000. Neither the 2002 Census of Agriculture nor the Economic Census contains annual revenue or employee information for firms classified within Timber Tract Operations or Logging.

Entities within the newly quarantined counties are required to comply with the conditions governing the interstate movement of regulated articles. Regulated articles may be moved interstate only if accompanied by a certificate or limited permit. A certificate is issued by an inspector or by an operator who has entered into a compliance agreement with APHIS, after it is determined that the regulated articles are not infested with PSB and do not present a risk of spreading PSB to other areas. A limited permit is issued if the regulated articles are to be moved interstate "to a specified destination for specified handling, processing, or utilization," and the movement will not result in the spread of PSB. While this action will require submission of relevant information for the issuance of certificates, limited permits, and compliance agreements, this information is of the same type as already required for interstate movement of regulated articles under the current Federal Orders.

The services of an inspector are provided without cost during normal business hours. The user is responsible for all costs and charges arising from inspection and other services provided outside of normal business hours. The entity receiving inspection services may

incur certain nonmonetary costs related to those services. For example, any entity (other than one having a compliance agreement with APHIS) that intends to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector at least 48 hours in advance of the desired interstate movement. APHIS welcomes information that the public may provide concerning such nonmonetary costs of the quarantine.

With respect to phytosanitary treatment, fumigation is authorized for use on pine logs with bark attached, pine lumber with bark attached, pine bark products, pine stumps, cut pine Christmas trees, and raw pine materials for pine wreaths and garlands. Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands. In addition, approved pest management methods exist for pine bark products, such as grinding into pieces of 1 inch or less in size or composting in accordance with certain procedures.

These treatment options are unlikely to be burdensome to the affected entities. PSB can be readily managed at Christmas tree farms and nurseries through good sanitation and pest management practices. For example, culled trees and other potential brood material can be chipped or piled and burned prior to beetle emergence in late spring. Susceptible trees can be treated with the application of routine cover sprays during shoot feeding to protect against feeding damage. While the services of a licensed pesticide applicator may be needed, many Christmas tree farms and nurseries either have a licensed pesticide applicator on site or employ a commercial firm for normal pest and disease control.<sup>1</sup>

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

<sup>1</sup> These observations are taken from a New Jersey Department of Agriculture proposed rule for expanding the pine shoot beetle quarantine in that State. See <http://www.state.nj.us/agriculture/rule/rule22096.html>.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–3, paragraph (c) is amended as follows:

■ a. In the entries for Indiana and Maine, by adding new counties in alphabetical order to read as set forth below.

■ b. By revising the entry for Ohio to read as set forth below.

#### § 301.50–3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

#### Indiana

\* \* \* \* \*

*Greene County.* The entire county.

\* \* \* \* \*

#### Maine

*Androscoggin County.* The entire county.

*Cumberland County.* The entire county.

\* \* \* \* \*

*Hancock County.* The entire county.

*Kennebec County.* The entire county.

*Knox County.* The entire county.

*Lincoln County.* The entire county.

\* \* \* \* \*

*Penobscot County.* The entire county.

*Piscataquis County.* The entire county.

*Sagadahoc County.* The entire county.

*Somerset County.* The entire county.

Waldo County. The entire county.  
York County. The entire county.

\* \* \* \* \*

## Ohio

The entire State.

\* \* \* \* \*

Done in Washington, DC, this 15th day of September 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9-22633 Filed 9-18-09; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1470

RIN 0578-AA43

#### Conservation Stewardship Program

**AGENCY:** Commodity Credit Corporation, Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Interim final rule; extension of comment period.

**SUMMARY:** The Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation, published in the **Federal Register** of July 29, 2009, an interim final rule with request for comment establishing the program framework for implementation of the Conservation Stewardship Program (CSP). The July 29, 2009, interim final rule established a 60-day comment period that closes on September 28, 2009. This document extends the comment period an additional 30-day period to provide the public an opportunity to comment upon the implementation of the program through the first sign-up and ranking period that closes September 30, 2009.

**DATES:** The comment period for the CSP interim final rule published on July 29, 2009 (74 FR 37499) is hereby extended and comments must be received on or before October 28, 2009. Additionally, NRCS has extended the public comment period for the Environmental Analysis (EA) and Finding of No Significant Impact (FONSI) until October 28, 2009. A copy of the EA and FONSI may be obtained, and comments submitted, as provided for in the July 29, 2009, CSP interim final rule.

**ADDRESSES:** You may send comments (identified by Docket Number NRCS-IFR-09004) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov>

and follow the instructions for sending comments electronically.

- *Mail:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237 South Building, Washington, DC 20250;

- *E-mail:* [CSP2008@wdc.usda.gov](mailto:CSP2008@wdc.usda.gov).

- *Fax:* (202) 720-4265.

- *Hand Delivery:* USDA South Building, 1400 Independence Avenue, SW., Room 5237, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720-4527 in order to be escorted into the building;

- The interim final rule and this extension may be accessed via the Internet. Users can access the NRCS homepage at: <http://www.nrcs.usda.gov>; select the Farm Bill link from the menu; select the Interim Final Rules link from beneath the Final and Interim Final Rules Index title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at: (202) 720-2600 (voice and TDD).

#### FOR FURTHER INFORMATION CONTACT:

Gregory Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237 South Building, Washington, DC 20250; Phone: (202) 720-1845; Fax: (202) 720-4265; or e-mail [CSP2008@wdc.usda.gov](mailto:CSP2008@wdc.usda.gov).

Signed this 10th day of September 2009, in Washington, DC.

**Dave White,**

*Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

[FR Doc. E9-22597 Filed 9-18-09; 8:45 am]

BILLING CODE 3410-16-P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1779

### Rural Housing Service

#### 7 CFR Part 3575

### Rural Business—Cooperative Service

### Rural Utilities Service

#### 7 CFR Parts 4279 and 4280

### Rural Business—Cooperative Service

### Rural Housing Service

### Rural Utilities Service

#### 7 CFR Part 5001

[FR Doc. E8-29151]

RIN 0570-AA65

### Rural Development Guaranteed Loans

**AGENCIES:** Rural Business—Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

**ACTION:** Interim final rule; withdrawal.

**SUMMARY:** On December 17, 2008, USDA Rural Development published an interim rule with request for comments establishing a unified guaranteed loan platform for the enhanced delivery of four existing Rural Development guaranteed loan programs—Community Facility; Water and Waste Disposal; Business and Industry; and Renewable Energy Systems and Energy Efficiency Improvement Projects. Having considered the comments received on the interim rule and for the reasons explained below, Rural Development is withdrawing the interim rule for Rural Development Guaranteed Loans.

**DATES:** The interim final rule published on December 17, 2008 (73 FR 76698), delayed until February 17, 2009 (74 FR 2823), further delayed until March 9, 2009 (74 FR 7179), further delayed until June 1, 2009 (74 FR 9759), and further delayed until October 1, 2009 (74 FR 25617) is withdrawn as of September 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Foore, Rural Development, Business and Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3201, Washington, DC 20250-3201; e-mail: [Michael.Foore@wdc.usda.gov](mailto:Michael.Foore@wdc.usda.gov); telephone (202) 690-4730.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 14, 2007, Rural Development proposed (72 FR 52618) to combine four of its guaranteed loan programs into a unified regulatory platform. These four regulations are Community Facility; Water and Waste Disposal; Business and Industry; and Renewable Energy Systems and Energy Efficiency Improvement Projects. The regulations for these four programs developed over time and, in some aspects, independently of each other. As a result, certain operational and administrative issues associated with the utilization of Agency resources and risk management developed when looking at all four program regulations as a whole as well as individually. The intent of the interim rule was to eliminate or mitigate these issues, enable the Agency, administratively, to better manage its guaranteed loan making and servicing activities, and to reduce the cost of operating the guaranteed loan programs.

In response to comments received on the proposed rule, Rural Development made significant changes to the unified guaranteed loan regulatory platform. Because of the level and number of changes made to the proposed rule, Rural Development issued an interim rule, which was published in the **Federal Register** on December 17, 2008 (73 FR 76698), with request for comments, with an effective date of January 16, 2009.

Subsequent to the December 17, 2008 **Federal Register** notice, Rural Development issued a series of notices delaying the effective date of the interim rule (74 FR 2823, January 16, 2009; 74 FR 7179, February 13, 2009; 74 FR 9759, March 6, 2009; and 74 FR 25617, May 29, 2009) such that the effective date was delayed to October 1, 2009. USDA Rural Development identified the need for delaying the effective date of the interim rule in each of these notices. Reasons cited included the necessity for additional time in order to:

- Make changes to accounting and financial control information technology systems critical to the delivery of these programs;
- Prepare the best guidance for its field staff and to train the field staff; and
- Finish considering the public comments received during the comment period for the interim rule as well as the public comments received on delaying the effective date of the interim rule.

In light of the pending October 1, 2009, effective date for the interim rule and the need to review of the interim rule, as described in the January 20, 2009, memo from the Assistant to the

President and Chief of Staff, entitled “Regulatory Review”, Rural Development conducted a review of the interim rule and the comments received on it. Rural Development received a total of 71 public comment letters at various stages during the development of the interim rule—when it was proposed, when it was published, and when its effective date was first proposed to be extended. Comment letters were received from Rural Development personnel, attorneys, financial institutions, trade groups, lender associations, and individuals.

Comments on the proposed rule were made on both the proposed guaranteed loan platform and on specific provisions contained in the proposed rule. While a number of commenters stated that they “commend” or “support” the unified guaranteed loan platform, others expressed strong concerns, with some suggesting that, if adopted as proposed, the rule would impose unnecessary burden on both borrowers and lenders, and could result in lenders not participating in the program. Numerous comments were also received on specific proposed requirements (e.g., the threshold level at which audited financial statements would be required; inclusion of lines of credit as an eligible loan purpose under the Business and Industry program). Many commenters requested that the Agency continue the current policies found in the current regulations, most frequently referring to the Business and Industry regulations (7 CFR part 4279, subpart A and subpart B, and 7 CFR 4287, subpart B). In many, if not most, instances, the Agency agreed with the commenters and made revisions as reflected in the interim rule.

In commenting on the interim rule, most commenters were still very concerned about the effect of the interim rule on lenders and borrowers, urging Rural Development to either withdraw the rule or to further delay its effective date until substantial improvements could be made. Concerns expressed included, but were not limited to:

- Because the interim rule is a new program with new procedures, Rural Development staff and commercial lenders will spend significant time and effort re-learning programs that are currently well-understood and fluently operated. Thus, at a time when additional funding will be available through the forthcoming stimulus and disaster funds, implementing the interim rule could endanger a successful program and impede delivery of funds.
- The interim rule adds unnecessary confusion and complexity to the delivery of these programs, creating not only a confusing regulatory maze for

borrowers to navigate in order to access program funds provided in the 2008 Farm Bill, but a tremendous drag on Rural Development and lender productivity at a time when all efforts should be directed to delivering stimulus funds.

- The interim rule could significantly curtail the ability of these programs to maintain continuous operation because all loan guarantees will halt until such time as there is a new “supply” of approved lenders. This is not appropriate customer service given the current economic downturn when the programs are most needed and the additional economic stimulus funding authority.

As noted previously, several commenters concurred with the general goals of unified platform for guaranteed loans, which include streamlining the regulatory framework of these programs, minimizing the time and effort of dealing with separate sets of regulations and requirements, and making them easier to use for lenders and borrowers. Implemented correctly, such a reorganization could free up agency personnel to spend their time in more constructive pursuits to enhance the administration and effectiveness of these programs. One commenter encouraged Rural Development to implement this program without substantial changes to the process that is currently in place, with several commenters encouraging Rural Development to work with the lending community to improve program delivery.

Based on its review of the interim rule and its consideration of the comments received, Rural Development has determined that a better alternative exists to the implementation of its guaranteed loan programs than would be achieved under the interim rule. While Rural Development supports a “common regulatory platform” as a desirable structure, it now believes the platform found in 7 CFR part 5001 is not the best approach. In general, Rural Development believes that the platform created under 7 CFR part 5001 is “too broad” in its scope, attempting to provide for programs whose primary focus includes both commercial lending activities (i.e., business and industry and renewable energy) and community development activities (i.e., community facilities and water and waste).

Further, Rural Development believes that implementing 7 CFR part 5001 would impose excessive and burdensome requirements on lenders by requiring them to seek approval to do business with the Agency and submit summaries of their lending policies as

well as on non traditional lenders. Such provisions would discourage the participation of many lenders in the program, which would jeopardize the utilization of funds in these programs. Rural Development agrees with the commenters that this is of particular concern in light of the need of Rural Development's Rural Business—Cooperative Service to process the applications for Business and Industry Loan Guarantees funded with American Recovery and Reinvestment Act (Recovery Act) funds pursuant to the Notice of Funds Availability published on July 24, 2009 (74 FR 36649).

Instead, Rural Development believes that it is better to narrow the scope of a common regulatory platform to the activities associated with its commercial lending activities. In doing so, Rural Development will be able to shift the focus of the common regulatory platform from a broad array of guaranteed loan activities to those commercial lending activities associated with its Business Program, including renewable energy.

Focusing on commercial lending activities within its Business Program provides Rural Development the option of developing a common regulatory structure based on its current Business and Industry guaranteed loan regulations (7 CFR part 4279, subparts A and B, and 7 CFR part 4287, subpart B) and on its current Rural Energy for America Program regulation (7 CFR part 4280, subpart B) and incorporating the Biorefinery Assistance guaranteed loan program into this regulatory structure. By adopting, leveraging, and refining these existing regulations, Rural Development believes that this approach to developing a common regulatory structure for its commercial lending activities is preferable to implementing 7 CFR Part 5001 for several reasons, as suggested by the commenters, including, but not necessarily limited to:

- In contrast to 7 CFR part 5001, the framework of the current Business and Industry Loan Guarantee regulations is well established with stakeholders and has a proven program delivery track record.

- Implementing 7 CFR part 5001 would require both lenders and Rural Development staff to be re-trained in order to learn a new system. Because such a complete overhaul of the Business Program regulations is not required, it is not appropriate to burden the Rural Development staff to learn and implement a completely new system.

- Implementing 7 CFR part 5001 would impede Business Program funding utilization. The lack of

familiarity with the interim rule would cause a 60 to 90 day standstill in program delivery at a time when the program level is at record levels. Furthermore, implementation of the interim rule will seriously impede the Administration's initiative to use Recovery Act funds to improve the Nation's economy.

In summary, based on its review and re-examination of 7 CFR Part 5001 and the comments received, Rural Development takes the position that, with some refinement and enhancement, a common regulatory structure for guaranteed loans utilizing the current Business Program regulations will result in a better and more efficient regulatory structure than would be achieved through the implementation of 7 CFR part 5001.

## II. Withdrawal of Interim Rule

Accordingly, the interim final rule published on December 17, 2008 (73 FR 76698), delayed until February 17, 2009, (74 FR 2823), further delayed until March 9, 2009 (74 FR 7179), further delayed until June 1, 2009 (74 FR 9759), and further delayed until October 1, 2009 (74 FR 25617) is withdrawn as of September 21, 2009.

Dated: September 14, 2009.

**Dallas Tonsager,**

*Under Secretary.*

[FR Doc. E9–22527 Filed 9–18–09; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2008–1325; Directorate Identifier 2008–NM–157–AD; Amendment 39–16024; AD 2009–20–01]

**RIN 2120–AA64**

#### **Airworthiness Directives; Boeing Model 727–281 Airplanes Equipped With Auxiliary Fuel Tanks Installed in Accordance With Supplemental Type Certificate SA3449NM**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 727–281 airplanes. This AD requires deactivation of Rogerson Aircraft Corporation auxiliary fuel tanks. This AD results from fuel system reviews conducted by the manufacturer, which identified potential unsafe conditions but has not provided

associated corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD is effective October 26, 2009.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 727–281 airplanes. That NPRM was published in the **Federal Register** on December 23, 2008 (73 FR 78675). That NPRM proposed to require deactivation of Rogerson Aircraft Corporation auxiliary fuel tanks.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Boeing supports the NPRM.

##### **Conclusion**

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

##### **Costs of Compliance**

This AD would affect about 17 U.S.-registered airplanes. The following table provides the estimated costs to comply with this AD.

## ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Report .....	1	\$80	None .....	\$80	\$1,360.
Preparation of tank deactivation procedure .....	80	80	None .....	6,400	Up to \$108,800.
Physical tank deactivation .....	30	80	\$1,200 .....	3,600	Up to \$61,200.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify that this AD:*

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

- Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by adding the following new AD:

**2009–20–01 Boeing:** Amendment 39–16024. Docket No. FAA–2008–1325; Directorate Identifier 2008–NM–157–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective October 26, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 727–281 airplanes, certificated in any category, and equipped with auxiliary fuel tanks installed in accordance with Supplemental Type Certificate (STC) SA3449NM.

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Report**

(f) Within 60 days after the effective date of this AD, submit a report to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Information collection requirements in this AD are approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are assigned OMB Control Number 2120–0056. The report must include the following information:

- (1) The airplane registration and auxiliary tank STC number installed.
- (2) The usage frequency in terms of total number of flights per year and total number of flights for which the auxiliary tank is used.

**Prevent Usage of Auxiliary Fuel Tanks**

(g) Within 90 days after the effective date of this AD, deactivate the auxiliary fuel tanks, in accordance with a deactivation procedure approved by the Manager of the Los Angeles ACO. Any auxiliary tank component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation may not result in the need for additional instructions for continued airworthiness.

**Note 1:** Appendix A of this AD provides criteria that might need to be included in the deactivation procedure. Timely approval is dependent on early submittal of the deactivation procedures.

**Note 2:** For technical information, contact Dan Zevallos, Director of Program Management, Rogerson Aircraft Corporation, 2201 Alton Parkway, Irvine, California 92606; telephone (949) 442–2306; fax (949) 442–2322.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

**Material Incorporated by Reference**

(i) None.

**Appendix A****Deactivation Criteria**

The auxiliary fuel tank deactivation procedure required by paragraph (g) of this AD might need to address the following actions.

(1) Permanently drain auxiliary fuel tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

**Note:** If applicable, removing the bladder might help eliminate out-gassing.

(2) Disconnect all electrical connections from the fuel quantity indication system (FQIS), fuel pumps if applicable, float switches, and all other electrical connections required for auxiliary tank operation, and stow them at the auxiliary tank interface.

(3) Disconnect all pneumatic connections if applicable, cap them at the pneumatic source, and secure them.

(4) Disconnect all fuel feed and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) tanks, cap them at the airplane tank side, and secure them in accordance with a method approved by the FAA; one approved method is specified in AC 25–8 Auxiliary Fuel Tank Systems Installations. In order to eliminate the possibility of structural deformation during cabin decompression, leave open and secure the disconnected auxiliary fuel tank vent lines.

(5) Pull and collar all circuit breakers used to operate the auxiliary tank.

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable airplane flight manual (AFM) to indicate that the auxiliary fuel tank is deactivated. Remove auxiliary fuel tank operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary tank is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary tank maintenance procedures.

(9) After the auxiliary fuel tank is deactivated, accomplish procedures such as leak checks and pressure checks deemed necessary before returning the airplane to service. These procedures must include verification that the airplane FQIS and fuel distribution systems have not been adversely affected.

(10) Include with the operator's proposed procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation and return the airplane to service.

Issued in Renton, Washington, on September 11, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–22575 Filed 9–18–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772 and 774**

[Docket No. 0908141238–91252–01]

**RIN 0694–AE72**

### Updated Statements of Legal Authority for the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the Code of Federal Regulations legal authority citations for the Export Administration Regulations (EAR) to include the citation to the President's *Notice of August 13, 2009—Continuation of Emergency Regarding Export Control Regulations*.

**DATES:** The rule is effective September 21, 2009.

**ADDRESSES:** Comments concerning this rule should be sent to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov), fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE72 in all comments, and in the subject line of e-mail comments.

**FOR FURTHER INFORMATION CONTACT:** William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440.

### SUPPLEMENTARY INFORMATION:

#### Background

Since the Export Administration Act expired in August 2001, parts 730–744 and 746–774 of the EAR have been continued in force pursuant to Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002) and the annual notices continuing the emergency declared in that executive order. This rule revises authority citations in the Code of Federal Regulations to include the President's *Notice of August 13, 2009—Continuation of Emergency Regarding Export Control Regulations* (74 FR 41325, August 14, 2009), which is the most recent such annual notice. This rule also removes the citation to Public Law 106–508 from part 743. Public Law 106–508 is the 2000 renewal of the Export Administration Act, which has expired, making the citation obsolete.

## Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

### List of Subjects

#### 15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

#### 15 CFR Parts 732, 740, 748, 750, 752 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

#### 15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

**15 CFR Parts 736, 738, 770 and 772**

Exports.

**15 CFR Part 742**

Exports, Terrorism.

**15 CFR Part 743**

Administrative practice and procedure, Reporting and recordkeeping requirements.

**15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

**15 CFR Part 746 and 774**

Exports, Reporting and recordkeeping requirements.

**15 CFR Part 747**

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

**15 CFR Part 754**

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

**15 CFR Part 756**

Administrative practice and procedure, Exports, Penalties.

**15 CFR Part 760**

Boycotts, Exports, Reporting and recordkeeping requirements.

**15 CFR Part 762**

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

**15 CFR Part 764**

Administrative practice and procedure, Exports, Law Enforcement, Penalties.

**15 CFR Part 766**

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

**15 CFR Part 768**

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Science and technology.

■ Accordingly, parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772 and 774 of the EAR (15 CFR parts 700–774) are amended as follows:

**PART 730—AMENDED**

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**PART 732—AMENDED**

■ 2. The authority citation for 15 CFR part 732 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

**PART 734—AMENDED**

■ 3. The authority citation for 15 CFR part 734 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**PART 736—AMENDED**

■ 4. The authority citation for 15 CFR part 736 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14,

2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**PART 738—AMENDED**

■ 5. The authority citation for 15 CFR part 738 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

**PART 740—AMENDED**

■ 6. The authority citation for 15 CFR part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

**PART 742—AMENDED**

■ 7. The authority citation for 15 CFR part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Public Law 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**PART 743—AMENDED**

■ 8. The authority citation for 15 CFR part 743 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

**PART 744—AMENDED**

■ 9. The authority citation for 15 CFR part 744 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996

Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

#### PART 746—AMENDED

- 10. The authority citation for 15 CFR part 746 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Public Law 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 747—AMENDED

- 11. The authority citation for 15 CFR part 747 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Public Law 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 748—AMENDED

- 12. The authority citation for 15 CFR part 748 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 750—AMENDED

- 13. The authority citation for 15 CFR part 750 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Public Law 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 752—AMENDED

- 14. The authority citation for 15 CFR part 752 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice

of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 754—AMENDED

- 15. The authority citation for 15 CFR part 754 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 756—AMENDED

- 16. The authority citation for 15 CFR part 756 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 758—AMENDED

- 17. The authority citation for 15 CFR part 758 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 760—AMENDED

- 18. The authority citation for 15 CFR part 760 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 762—AMENDED

- 19. The authority citation for 15 CFR part 762 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 764—AMENDED

- 20. The authority citation for 15 CFR part 764 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 766—AMENDED

- 21. The authority citation for 15 CFR part 766 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 768—AMENDED

- 22. The authority citation for 15 CFR part 768 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 770—AMENDED

- 23. The authority citation for 15 CFR part 770 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 772—AMENDED

- 24. The authority citation for 15 CFR part 772 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

#### PART 774—AMENDED

- 25. The authority citation for 15 CFR part 774 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

Dated: September 15, 2009.

**Matthew S. Borman,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. E9–22677 Filed 9–18–09; 8:45 am]

**BILLING CODE 3510–33–P**

#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 17

**RIN 2900–AN23**

##### Expansion of Enrollment in the VA Health Care System; Correction

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Correcting amendment.

**SUMMARY:** The Department of Veterans Affairs (VA) published a final rule in the **Federal Register** on May 15, 2009 (74 FR 22832), amending its medical regulations regarding enrollment in the VA health care system. In particular, it established additional sub-priorities within enrollment priority category 8

and provided that beginning on the effective date of the rule, VA will begin enrolling priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less. A provision in the regulatory text contained a reference to the effective date of the regulation instead of providing the actual effective date. This document clarifies the beginning date VA will enroll the priority categories of veterans set forth in the regulation which is June 15, 2009.

**DATES:** *Effective Date:* September 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Roscoe Butler, Acting Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461-1586. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On May 15, 2009, VA published a final rule in the **Federal Register** (74 FR 22832) amending its medial regulations regarding enrollment in the VA health care system set forth at 38 CFR 17.36. The final rule amended regulations implementing Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, which required VA to establish a national enrollment system

to manage the delivery of inpatient hospital care and outpatient medical care, within available appropriated resources. It directed that the enrollment system be managed in such a way as "to ensure that the provision of care to enrollees is timely and acceptable in quality," and authorized such sub-prioritization of the statutory enrollment categories "as the Secretary determined necessary." The law also provided that starting on October 1, 1998, most veterans had to enroll in the VA health care system as a condition for receiving VA hospital and outpatient care.

The May 15, 2009, final rule established additional subpriorities within enrollment priority category 8 and provided that beginning on the effective date of the rule, VA will enroll priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less. In that document, in § 17.36(2)(c), we inadvertently failed to remove a bracketed reference to the effective date of the regulation and to add the actual effective date of June 15, 2009, in its place. This document corrects that oversight.

#### **List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism,

Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 15, 2009.

**William F. Russo,**

*Director of Regulations Management.*

■ For the reason set out in the preamble, VA is correcting 38 CFR part 17 as follows:

#### **PART 17—MEDICAL**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as stated in specific sections.

#### **§ 17.36 [Amended]**

■ 2. In § 17.36, paragraph (c)(2) is amended by removing "[effective date of regulation]" and adding, in its place, "June 15, 2009".

[FR Doc. E9-22591 Filed 9-18-09; 8:45 am]

**BILLING CODE 8320-01-P**

# Proposed Rules

Federal Register

Vol. 74, No. 181

Monday, September 21, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 301 and 305

[Docket No. APHIS–2009–0002]

#### Regulation of the Interstate Movement of Lemons From an Area Quarantined for Mediterranean Fruit Fly

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the list of regulated articles in our domestic fruit fly quarantine regulations. The regulations currently indicate that smooth-skinned lemons (all varieties of *Citrus limon*) harvested for packing by commercial packinghouses are not regulated articles for Mediterranean fruit fly. We are proposing to amend the regulations to designate all yellow lemons as regulated articles. This proposed change is based on research indicating that, under certain conditions, yellow lemons are a host for Mediterranean fruit fly. As a result of this proposed action, yellow lemons produced in an area quarantined for Mediterranean fruit fly would be subject to certain interstate movement restrictions in order to prevent the spread of that pest into uninfested areas of the United States.

**DATES:** We will consider all comments that we receive on or before November 20, 2009.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0002> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS–2009–0002, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0002.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne D. Burnett, APHIS Exotic Fruit Fly Director, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–4387.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world's most destructive pests of fruits and vegetables. The short life cycle of the Medfly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Animal and Plant Health Inspection Service (APHIS) enforces regulations in 7 CFR part 301, "Domestic Quarantine Notices," that are designed to prevent the interstate spread of pests that are new to or not widely distributed within the United States. The regulations in "Subpart—Fruit Flies," contained in §§ 301.32 through 301.32–10 (referred to below as the regulations), are intended to prevent the spread of fruit flies designated as plant pests to noninfested areas of the United States. To this end, the regulations impose restrictions on the interstate movement of articles that are hosts of fruit flies or whose movement could otherwise spread fruit flies from areas quarantined because of fruit flies. We refer to these articles as "regulated articles." The table in § 301.32–2(a), "Regulated Articles," lists articles subject to domestic quarantine

regulations for several species of fruit fly, including Medfly. While lemons (*Citrus limon*) are included in the table as a regulated article for several types of fruit flies, a footnote to the table indicates that smooth-skinned lemons harvested for packing by commercial packinghouses are not regulated articles for Medfly.

The decision to exempt smooth-skinned lemons harvested for packing by commercial packinghouses was originally based on research published by scientists from the U.S. Department of Agriculture's Agricultural Research Service (ARS).<sup>1</sup> Citing their own research and other studies that examined lemons as a potential Medfly host, ARS scientists noted that rind toughness and thickness generally impede Medflies from infesting lemons. Moreover, chemicals within the lemon rind are toxic to Medfly eggs and any larvae that manage to hatch there. They also determined that lemons grown and packed commercially are less likely to be infested with plant pests, including Medfly, than noncommercial consignments.

However, in 2006 live Medfly larvae were intercepted in commercial shipments of lemons from Spain, leading us to re-examine whether lemons should be designated as regulated articles in areas quarantined for Medfly. We reviewed over 90 scientific publications, including the above-referenced 1984 study. We also examined findings from two site visits to Medfly-infested lemon-producing areas in Spain and Argentina, as well as details of the Medfly infestation in Spanish commercial lemons. Our conclusions appear in a report titled "Lemon (*Citrus limon*) as a host for Mediterranean fruit fly (Medfly; *Ceratitis capitata*): A scientific review and status report" (January 2008). Copies of the report may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**, viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov), or retrieved online at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/fruit\\_flies/index.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/fruit_flies/index.shtml).

<sup>1</sup> Spitler, G.H., J.W. Armstrong, and H.M. Couey. 1984. Mediterranean fruit fly (Diptera: Tephritidae) host status of commercial lemon. Journal of Economic Entomology 77: 1441–1444.

Based on our review, we have determined that lemons are a conditional non-host for Medfly, meaning that while Medfly generally does not infest lemons, it will do so under certain conditions. For example, green lemons are not hosts of Medfly, but as they mature they become more susceptible to infestation. It is likely that light yellow lemons are not at a maturity stage where they would be susceptible to Medfly; only damaged or dark yellow, overly mature fruit are considered suitable hosts.

Resistance of lemons to Medfly infestation is causally linked to the thickness, toughness, and chemical toxicity of the lemon rind. The female Medfly ovipositor normally cannot pierce through the lemon rind to lay eggs in the toxin-free pulp, and if it does, the eggs laid within the rind are killed by the toxic compounds. However, if the rind is thin or damaged, or existing oviposition puncture holes are present, females can exploit these vulnerable points by ovipositing into the pulp, where Medfly eggs and larvae are more likely to survive and develop. A high Medfly population also increases the likelihood of lemon infestation due to repeated ovipositing by females into existing oviposition holes in the rind. These findings indicate the need to designate all varieties of yellow lemons as regulated articles for Medfly in our domestic fruit fly quarantine regulations in order to prevent the spread of Medfly to uninfested areas of the United States.

We are therefore proposing to amend the entry for lemons in the table of regulated articles in § 301.32–2(a) by removing the exemption for smooth-skinned lemons harvested for packing by commercial packinghouses, and instead indicating that all varieties of yellow lemons are regulated articles for Medfly.

We are also proposing to amend the phytosanitary treatments regulations in 7 CFR part 305 by updating the table in § 305.2(h)(2)(ii), which includes approved treatments for regulated articles moved interstate from areas quarantined for fruit flies, to correct two outdated references to the former locations of specific provisions of the fruit fly regulations.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We have prepared an economic analysis for this proposed rule. As described in the economic analysis, the

majority of producers, importers, and merchants that may be affected by the proposed rule are small entities. No commercial lemon producers are located in the area currently quarantined for Medfly. The number of producers that may be affected in the future is not known, since we do not have data on production of smooth-skinned lemons harvested for packing by commercial packinghouses. Nonetheless, the costs of pre-harvest or post-harvest treatments of smooth-skinned lemons that would be required by this rule are negligible. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The full economic analysis may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects**

##### **7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

##### **7 CFR Part 305**

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR parts 301 and 305 as follows:

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

##### **§ 301.32–2 [Amended]**

2. In § 301.32–2, paragraph (a), footnote 2 to the table is amended by removing the words “Smooth-skinned lemons harvested for packing by commercial packinghouses are not” and adding the words “Only yellow lemons are” in their place.

#### **PART 305—PHYTOSANITARY TREATMENTS**

3. The authority citation for part 305 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

##### **§ 305.2 [Amended]**

4. In § 305.2, the table in paragraph (h)(2)(ii) is amended by removing, from the column titled “Commodity”, the citations “§ 301.78–2(a)” and “§ 301.99–2(b)” and adding the citation “§ 301.32–2(a)” in their place.

Done in Washington, DC, this 15th day of September 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–22631 Filed 9–18–09; 8:45 am]

**BILLING CODE 3410–34–P**

#### **DEPARTMENT OF AGRICULTURE**

##### **Commodity Credit Corporation**

##### **7 CFR Part 1493**

#### **Solicitation of Input from Stakeholders on Revised Fees for the Export Credit Guarantee (GSM–102) Program**

**AGENCY:** Foreign Agricultural Service and Commodity Credit Corporation, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice solicits comments on proposed revisions to the fee rate schedule for the U.S. Department of Agriculture (USDA), Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102). The Food, Conservation, and Energy Act of 2008 (the Act) amended certain GSM-102 program provisions related to fees. CCC's goals in proposing this revised fee structure are to create fees more commensurate with risk, generate additional program revenue in fiscal year (FY) 2010 to offset program costs, and consider allowing program participation by riskier countries.

**DATES:** Comments on this notice must be received by October 21, 2009 to be assured of consideration.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [gsm102fees@fas.usda.gov](mailto:gsm102fees@fas.usda.gov).
- *Fax:* (202) 720-2495; "Attention: GSM-102 Fee Comments."
- *Mail:* P. Mark Rowse, Director, Office of Trade Programs, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Mail Stop 1025, Washington, DC 20250-1025.
- *Hand Delivery/Courier:* 1250 Maryland Avenue, SW., Suite 420, Washington, DC 20024.

All comments received will be available for public inspection at the above address during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** P. Mark Rowse, Director, Office of Trade Programs, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Mail Stop 1025, Washington, DC 20250-1025; telephone: (202) 720-6211.

**SUPPLEMENTARY INFORMATION:**

**Background and Purpose**

The GSM-102 program is currently authorized under the Agricultural Trade Act of 1978, as amended. The GSM-102 program provides credit guarantees to encourage financing of commercial exports of U.S. agricultural products on competitive credit terms. The CCC currently has authorized availability of guarantees for transactions in at least 176 countries and regions, with 2,900 exporters eligible to participate. Since 1981, CCC has issued nearly \$92 billion in credit guarantees under the GSM-102 program. Under the terms of the guarantee, typically, 98 percent of principal and a portion of interest are covered on credit terms of up to 3 years. By financing less than 100 percent of the exported value, CCC encourages risk-sharing by the exporter or the exporter's assignee.

The issuance of the guarantee is subject to a fee paid by the applicant (the exporter). In July 2005, USDA initiated a risk-based fee structure. A fee is charged based on the tenor (length of credit period) of the guarantee and terms for principal payment installments, whether 6 months or annually, and the risk grade of the obligor country. CCC assigns a numeric risk category (0-7, lowest to highest risk) to each obligor country.

The Food, Conservation, and Energy Act of 2008 (the Act) amended certain GSM-102 program provisions related to fees. The Act repealed the 1 percent cap on fees. The Act also requires the Secretary, in carrying out the GSM-102 program, to "work with the industry to ensure, to the maximum extent practicable, that risk-based fees associated with the guarantees cover, but do not exceed, the operating costs and losses over the long-term." The Act defines the "long term" as "a period of 10 or more years."

CCC intends to revise the current fee structure, which has been in place since

July 2005. The revised fee structure is designed to accomplish the following goals:

1. *Create a fee structure more commensurate with risk.* The 1 percent fee cap in effect prior to the Act resulted in a program fee structure with disproportionately high fees for low-risk transactions and disproportionately low fees for higher-risk transactions. CCC proposes to correct this imbalance by reducing fees for transactions with lower risk countries and shorter tenors and increasing fees for certain higher risk countries and longer tenors. In doing so, CCC is responding to many program participants who have noted that fees for low-risk transactions are prohibitively expensive compared to fees for higher-risk transactions.

2. *Generate additional program revenue in fiscal year (FY) 2010 to offset program costs, as measured by budget subsidy.* Although budget subsidy costs are re-estimated each fiscal year, the Office of Management and Budget's most recent calculations of estimated budget subsidy for FY 2008 and FY 2009 are 3.05 percent and 0.87 percent, respectively. Although the initial budget subsidy estimate for FY 2010 is -1.21 percent (indicating revenues are projected to exceed costs), CCC must offset any costs that might ultimately be incurred in FY 2008 and FY 2009 to meet the provisions of the Act.

3. *Consider allowing program participation by riskier countries.* When CCC implemented risk-based fees in July 2005, the highest-risk countries were eliminated from programming because the 1 percent fee cap did not permit CCC to charge fees commensurate with the associated risk. With the elimination of the fee cap, CCC can now consider allowing some of these countries to participate, charging higher fees to offset risk. The chart below shows the proposed fee schedule:

**GSM-102 PROGRAM: PROPOSED PREMIUM PER U.S. \$100 OF COVERAGE**

Risk category								
Tenor	0	1	2	3	4	5	6	7
<b>Annual Payment of Principal</b>								
9 months .....	\$0.087	\$0.130	\$0.191	\$0.297	\$0.429	\$0.627	\$0.850	\$1.116
12 months .....	0.116	0.173	0.254	0.394	0.569	0.832	1.127	1.480
15 months .....	0.125	0.185	0.270	0.417	0.599	0.874	1.180	1.544
18 months .....	0.148	0.213	0.308	0.469	0.671	0.970	1.303	1.694
24 months .....	0.212	0.292	0.415	0.617	0.873	1.241	1.650	2.115
30 months .....	0.249	0.340	0.482	0.712	1.000	1.408	1.856	2.353
36 months .....	0.302	0.413	0.584	0.855	1.194	1.656	2.158	2.695
<b>Semi-Annual Payment of Principal</b>								
30 days .....	0.010	0.015	0.021	0.033	0.048	0.070	0.095	0.125
60 days .....	0.020	0.029	0.043	0.067	0.096	0.141	0.191	0.250

## GSM-102 PROGRAM: PROPOSED PREMIUM PER U.S. \$100 OF COVERAGE—Continued

Tenor	Risk category							
	0	1	2	3	4	5	6	7
90 days .....	0.029	0.044	0.064	0.100	0.144	0.211	0.286	0.376
4 months .....	0.039	0.058	0.086	0.133	0.192	0.281	0.381	0.500
6 months .....	0.058	0.087	0.128	0.199	0.287	0.420	0.569	0.748
9 months .....	0.068	0.102	0.149	0.231	0.334	0.489	0.662	0.870
12 months .....	0.087	0.130	0.191	0.296	0.427	0.625	0.847	1.112
15 months .....	0.102	0.150	0.219	0.338	0.486	0.707	0.955	1.249
18 months .....	0.129	0.184	0.266	0.403	0.576	0.831	1.115	1.447
24 months .....	0.173	0.240	0.343	0.512	0.725	1.035	1.378	1.770
30 months .....	0.218	0.299	0.424	0.627	0.882	1.241	1.637	2.076
36 months .....	0.262	0.358	0.506	0.743	1.040	1.447	1.891	2.371

For comparison purposes, the current GSM-102 fee structure may be found at <http://www.fas.usda.gov/excredits/gsm102fees.html>.

#### Implementation Plans

CCC will consider stakeholder input in determining the revised fee structure. CCC plans to implement a revised fee structure no later than September 30, 2009, so that any revised fees will be in effect for the FY 2010 GSM-102 program. Review of the fee structure will be an on-going process. CCC intends to make future revisions as internal and external events warrant, including in response to budget subsidy re-estimates, with the goal of being responsive to comments from program participants and meeting the requirements of the Act.

Signed at Washington, DC, on Sept. 3, 2009.

**Michael V. Michener,**

*Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.*

[FR Doc. E9-22661 Filed 9-18-09; 8:45 am]

BILLING CODE 3410-10-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0869; Directorate Identifier 2009-CE-043-AD]

RIN 2120-AA64

#### Airworthiness Directives; Vulcanair S.p.A. Models P 68, P 68B, P 68C, P 68C-TC, and P 68 "OBSERVER" Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 85-08-04, which applies to certain Vulcanair S.p.A. (Vulcanair) Models P 68, P 68B, P 68C, P 68C-TC, and P 68 "OBSERVER" airplanes. AD 85-08-04 currently requires you to repetitively visually inspect the front and rear wing spars for cracks. If cracks are found, AD 85-08-04 requires you to modify the wing spars. The wing spar modification terminates the repetitive inspection AD action and may be installed before cracks develop. Since we issued AD 85-08-04, the manufacturer revised the modification kit and identified additional airplane serial numbers that require the inspection and/or modification. Consequently, this proposed AD would retain the actions of AD 85-08-04, allow you to install the revised modification kit, and add additional serial numbers to the Applicability section. We are proposing this AD to detect and correct cracks in the front and rear wing spar, which could result in the wing separating from the airplane. This failure could lead to loss of control.

**DATES:** We must receive comments on this proposed AD by November 5, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
  - **Fax:** (202) 493-2251.
  - **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
  - **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- For service information identified in this proposed AD, contact Vulcanair

S.p.A., Via G. Pascoli, 7, Casoria (Naples) 80026 Italy; telephone: (+39)081.5918111; fax: (+39)081.5918172; e-mail: [customerservice@vulcanair.com](mailto:customerservice@vulcanair.com); Internet: <http://www.vulcanair.com>.

#### FOR FURTHER INFORMATION CONTACT:

Sarjapur Nagarajan, Aerospace Engineer, ACE-112, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2009-0869; Directorate Identifier 2009-CE-043-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

#### Discussion

Reports of cracks in the front and rear wing spar on Vulcanair P 68 series airplanes caused us to issue AD 85-08-04, Amendment 39-5037 (50 FR 14370, April 12, 1985). AD 85-08-04 currently requires the following on certain Vulcanair Models P 68, P 68B, P 68C, P 68C-TC, and P 68 "OBSERVER" airplanes:

- Repetitively visually inspecting the front and rear wing spars;
- Repairing the front and rear wing spars if cracks are found; and

• Modifying the front and rear spar if cracks are found or as a terminating action to the repetitive inspections.

Since we issued AD 85–08–04, the manufacturer revised the modification kit and identified additional airplane serial numbers that require the inspection and/or modification.

This condition, if not corrected, could result in the wing separating from the airplane. This failure could lead to loss of control.

#### Relevant Service Information

We have reviewed Partenavia Costruzioni Aeronautiche S.p.A. Service

Bulletin No. 65 Rev. 3, dated September 30, 1985.

The service information describes procedures for:

- Inspecting the front and rear wing spars for cracks;
- Repairing the front and rear spars if cracks are found; and
- Installing a front and rear spar modification kit.

#### FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same

type design. This proposed AD would supersede AD 85–08–04 with a new AD that would retain the actions of AD 85–08–04, allow you to install the revised modification kit, and add additional serial numbers to the Applicability section. This proposed AD would require you to use the service information described previously to perform these actions.

#### Costs of Compliance

We estimate that this proposed AD would affect 81 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
24 work-hours × \$80 per hour = \$1,920 .....	Not applicable .....	\$1,920	\$155,520

We estimate the following costs to do any necessary repair and modification that would be required based on the

results of the proposed inspection. We have no way of determining the number

of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
100 work-hours × \$80 per hour = \$8,000 .....	\$700	\$8,700

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5527) is located at the street address stated in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 85–08–04, Amendment 39–5037 (50 FR 14370, April 12, 1985), and adding the following new AD:

**Vulcanair S.p.A.:** Docket No. FAA–2009–0869; Directorate Identifier 2009–CE–043–AD.

#### Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by November 5, 2009.

#### Affected ADs

(b) This AD supersedes AD 85–08–04, Amendment 39–5037.

**Applicability**

(c) This AD applies to Models P 68, P 68B, P 68C, P 68C-TC, and P 68 "OBSERVER" airplanes, serial numbers 001 through 356, that are certificated in any category.

**Unsafe Condition**

(d) This AD results from reports of cracks in the front and rear wing spars. We are issuing this AD to detect and correct cracks in the front and rear wing spars, which could result in the wing separating from the

airplane. This failure could lead to loss of control.

**Compliance**

(e) For airplane serial numbers 001 through 328, to address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the front and rear wing spars for cracks.	Initially inspect within the next 100 hours time-in-service (TIS) after May 17, 1985 (the effective date of AD 85-08-04), or upon reaching 2,100 hours total TIS, whichever occurs later, and repetitively inspect thereafter at intervals not to exceed 500 hours TIS.	Follow Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 3, dated September 30, 1985; or Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 1, dated September 27, 1984.
(2) Repair all cracks found and modify the front and rear wing spars.	Before further flight after any inspection specified in paragraph (e)(1) of this AD where cracks are found.	Follow Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 3, dated September 30, 1985; or Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 1, dated September 27, 1984.
(3) At any time after the effective date of this AD, you may modify the front and rear wing spar to terminate the repetitive inspection requirements of this AD.	Not applicable .....	Follow Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 3, dated September 30, 1985; or Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 1, dated September 27, 1984.

(f) For airplane serial numbers 329 through 356, to address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the front and rear wing spars for cracks.	Initially within the next 100 hours TIS after the effective date of this AD, or upon reaching 2,100 total hours TIS, whichever occurs later and repetitively inspect thereafter at intervals not to exceed 500 hours TIS.	Follow Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 3, dated September 30, 1985.
(2) Repair all cracks found and modify the front and rear wing spars.	Before further flight after any inspection specified in paragraph (f)(1) of this AD where cracks are found.	Follow Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 3, dated September 30, 1985.
(3) At any time after the effective date of this AD, you may modify the front and rear wing spar to terminate the repetitive inspection requirements of this AD.	Not applicable .....	Follow Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65 Rev. 3, dated September 30, 1985.

**Alternative Methods of Compliance (AMOCs)**

(g) The Manager, Small Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, ACE-112, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) AMOCs approved for AD 85-08-04 are approved for this AD.

**Related Information**

(i) To get copies of the service information referenced in this AD, contact Vulcanair S.p.A., Via G. Pascoli, 7, Casoria (Naples) 80026 Italy; telephone: (+39)081.5918111; fax: (+39)081.5918172; e-mail: [customerservice@vulcanair.com](mailto:customerservice@vulcanair.com); Internet: <http://www.vulcanair.com>. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at <http://www.regulations.gov>.

Issued in Kansas City, Missouri, on September 15, 2009.

**Scott A. Horn,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-22640 Filed 9-18-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2009-0868; Directorate Identifier 2009-CE-047-AD]

RIN 2120-AA64

**Airworthiness Directives; ZLT Zeppelin Luftschifftechnik GmbH & Co KG Model LZ N07-100 Airships**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: The manufacturer has advised of receiving a report that during start up on ground a RH propeller gear box (PGB) on the airship has failed resulting in free rotation of the propeller. Investigation performed by the manufacturer revealed that the bevel gear in the propeller gearbox had cracked near the hub area. During an extensive metallurgical investigation of the cracked bevel gear some different manufacturing deviations outside of the specifications were detected. Deviations in the heat treatment, wall thickness of the bevel gear near the hub area, and score marks caused during the production process have been established as causal factors for this failure.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by November 5, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** (202) 493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090; e-mail: [karl.schletzbaum@faa.gov](mailto:karl.schletzbaum@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0868; Directorate Identifier 2009-CE-047-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2009-0182, dated August 20, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer has advised of receiving a report that during start up on ground a RH propeller gear box (PGB) on the airship has failed resulting in free rotation of the propeller. Investigation performed by the manufacturer revealed that the bevel gear in the propeller gearbox had cracked near the hub area.

During an extensive metallurgical investigation of the cracked bevel gear some different manufacturing deviations outside of the specifications were detected. Deviations in the heat treatment, wall thickness of the bevel gear near the hub area, and score marks caused during the production process have been established as causal factors for this failure.

For the reasons described above, this new AD mandates the replacement of the affected bevel gears, and limits, as a temporary measure, their service-life to 1 000 Flight Hours (for non-refurbished PGBs) and to 1 600 Flight Hours (for refurbished PGBs).

You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

ZLT Zeppelin Luftschifftechnik GmbH & Co KG has issued Service Bulletin S07 830 0001, Issue B-00, dated June 29, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of the Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This Proposed AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

**Costs of Compliance**

We estimate that this proposed AD will affect 1 product of U.S. registry. We also estimate that it would take about 18 work-hours per product to comply with the basic requirements of this proposed

AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$66,488 per gear box replacement. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$67,928 per gear box replacement.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- 1. Is not a “significant regulatory action” under Executive Order 12866;
- 2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- 3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

ZLT Zeppelin Luftschifftechnik GmbH & Co KG; Docket No. FAA–2009–0868; Directorate Identifier 2009–CE–047–AD.

Comments Due Date

- (a) We must receive comments by November 5, 2009.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Model LZ N07–100 airships, serial numbers 002, 003, and 004, that are certificated in any category and are equipped with the following propeller gear boxes:

Part No.	Serial No.	Designation
07 722 0001–200 .....	103, 106, 109, 112, 401, 401 .....	AFT propeller gear box.
07 722 0002–200 .....	101, 104, 107, 110, 201 .....	LH propeller gear box.
07 722 0003–200 .....	102, 105, 108, 111, 301, 302 .....	RH propeller gear box.

Subject

(d) Air Transport Association of America (ATA) Code 65: Tail Rotor Drive.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The manufacturer has advised of receiving a report that during start up on ground a RH propeller gear box (PGB) on the airship has failed resulting in free rotation of the propeller. Investigation performed by the manufacturer revealed that the bevel gear in the propeller gearbox had cracked near the hub area.

During an extensive metallurgical investigation of the cracked bevel gear some different manufacturing deviations outside of the specifications were detected. Deviations in the heat treatment, wall thickness of the bevel gear near the hub area, and score marks caused during the production process have been established as causal factors for this failure.

For the reasons described above, this new AD mandates the replacement of the affected bevel gears, and limits, as a temporary measure, their service-life to 1 000 Flight

Hours (for non-refurbished PGBs) and to 1 600 Flight Hours (for refurbished PGBs).

Actions and Compliance

(f) Unless already done, do the following actions in accordance with ZLT Zeppelin Luftschifftechnik GmbH & Co KG Service Bulletin S07 830 0001, Issue B–00, dated June 29, 2009:

(1) As of the effective date of this AD, before the accumulation of the applicable total hours time-in-service (TIS) as defined in the appendix of ZLT Zeppelin Luftschifftechnik GmbH & Co KG Service Bulletin S07 830 0001, Issue B–00, dated June 29, 2009, replace the bevel gears of the propeller gearbox.

(2) As of the effective date of this AD, for airships with a propeller gear box identified in paragraph (c)(1) of this AD that have exceeded the applicable total hours TIS as defined in the appendix of ZLT Zeppelin Luftschifftechnik GmbH & Co KG Service Bulletin S07 830 0001, Issue B–00, dated June 29, 2009, replace the bevel gears of the propeller gearbox within the next 30 days after the effective date of this AD.

(3) As of the effective date of this AD, airships with a propeller gear box S/N 102, 107, 108, 109, or 112, contact the manufacturer at ZLT Zeppelin Luftschifftechnik GmbH & Co KG, 88046 Friedrichsfafen, Allmannsweilerstrasse 132, Germany; telephone: + 49 (0) 7541–5900–546; fax: +40 (0) 7541–5900–516, to obtain a repair scheme within the next 30 days after the effective date of this AD. Incorporate the repair scheme before further flight after receipt.

(4) After doing the replacements required in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, replace the bevel gears of the propeller gearbox thereafter at intervals not to exceed 1,600 hours TIS on the propeller gearbox.

**Note 1:** The time between overhaul for gear boxes specified in the airship maintenance manual remains unchanged.

**Note 2:** Airships with a propeller gear box S/N 102, 107, 108, 109, or 112 have exceeded their life limit and are not eligible for bevel gear replacement. See paragraph (f)(3) of this AD.

**FAA AD Differences**

**Note 3:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090; e-mail: [karl.schletzbaum@faa.gov](mailto:karl.schletzbaum@faa.gov). Before using any approved AMOC on any airship to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2009-0182, dated August 20, 2009; and ZLT Zeppelin Luftschifftechnik GmbH & Co KG Service Bulletin S07 830 0001, Issue B-00, dated June 29, 2009, for related information.

Issued in Kansas City, Missouri, on September 14, 2009.

**Kim Smith,**

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-22641 Filed 9-18-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2009-0864; Directorate Identifier 2008-NM-202-AD]

RIN 2120-AA64

**Airworthiness Directives; Dassault Model Falcon 10 Airplanes; Model Fan Jet Falcon Airplanes; Model Mystere-Falcon 200 Airplanes; Model Mystere-Falcon 20-C5, 20-D5, 20-E5, and 20-F5 Airplanes; Model Falcon 2000 and Falcon 2000EX Airplanes; and Model Mystere-Falcon 50 and 900, and Falcon 900EX Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During maintenance on one aircraft, it was discovered that the overpressure capsules were broken on both pressurization valves. Failure of the pressurization control regulating valve (overpressure capsule) will affect the aircraft's overpressure protection.

\* \* \*

The unsafe condition is overpressurization, which can result in injury to the occupants and possible structural failure leading to loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by October 21, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax*: (202) 493-2251.
- *Mail*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201-440-6700; Internet <http://www.dassaultfalcon.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0864; Directorate Identifier 2008-NM-202-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008-0072,

dated April 18, 2008 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

During maintenance on one aircraft, it was discovered that the overpressure capsules were broken on both pressurization valves. Failure of the pressurization control regulating valve (overpressure capsule) will affect the aircraft's overpressure protection, possibly resulting in a structural failure in case of combination with another pressurization system failure. Consequently, Dassault Aviation has developed a repetitive check of this outflow valve capsule, which has already been introduced into the Maintenance of Components section (chapter 5–20) of the relevant Aircraft Maintenance Manuals (AMM).

For the reason described above, this EASA [European Aviation Safety Agency] Airworthiness Directive (AD) requires a repetitive check of the outflow valve overpressure capsule, as it will also be introduced into the Airworthiness Limitations section (chapter 5–40) of the respective AMMs.

The unsafe condition is overpressurization, which can result in injury to the occupants and possible structural failure leading to loss of control of the airplane. Required actions include repetitive inspections for overpressure tightness on both regulating valves, and replacing the affected valve with a serviceable unit, if necessary. You may obtain further information by examining the MCAI in the AD docket.

#### **FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### **Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA

policies. Any such differences are highlighted in a NOTE within the proposed AD.

#### **Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 1,082 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$86,560, or \$80 per product.

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### **Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

#### **The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)):**  
Docket No. FAA–2009–0864; Directorate Identifier 2008–NM–202–AD.

#### **Comments Due Date**

- (a) We must receive comments by October 21, 2009.

#### **Affected ADs**

- (b) None.

#### **Applicability**

- (c) This AD applies to the Dassault airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model Falcon 10 airplanes, Model Fan Jet Falcon airplanes, and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, all serial numbers, equipped with Liebherr or ABG–Semca pressurization outflow valves.

(2) Model Mystere-Falcon 200 airplanes, Model Mystere-Falcon 50 and 900, and Falcon 900EX airplanes, and Model Falcon 2000 and Falcon 2000EX airplanes, all serial numbers.

#### **Subject**

- (d) Air Transport Association (ATA) of America Code 21: Air Conditioning.

#### **Reason**

- (e) The mandatory continuing airworthiness information (MCAI) states:

During maintenance on one aircraft, it was discovered that the overpressure capsules were broken on both pressurization valves. Failure of the pressurization control regulating valve (overpressure capsule) will affect the aircraft's overpressure protection, possibly resulting in a structural failure in case of combination with another pressurization system failure. Consequently, Dassault Aviation has developed a repetitive check of this outflow valve capsule, which has already been introduced into the Maintenance of Components section (chapter 5–20) of the relevant Aircraft Maintenance Manuals (AMM).

For the reason described above, this EASA [European Aviation Safety Agency] Airworthiness Directive (AD) requires a repetitive check of the outflow valve

overpressure capsule, as it will also be introduced into the Airworthiness Limitations section (chapter 5–40) of the respective AMMs.

The unsafe condition is overpressurization, which can result in injury to the occupants and possible structural failure leading to the loss of control of the airplane. Required actions include repetitive inspections for overpressure tightness on both regulating

valves, and replacing the affected valve with a serviceable unit, if necessary.

#### Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 6 months after the effective date of this AD, or before reaching the applicable time in the “Inspection Threshold” column specified in Table 1 of this AD, whichever

occurs later, and thereafter at intervals not to exceed the applicable time in the “Inspection Interval” column specified in Table 1 of this AD: Inspect for overpressure tightness on both regulating valves using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (or its delegated agent).

TABLE 1—COMPLIANCE TIMES

Affected airplanes	Inspection threshold (whichever occurs later)		Inspection interval
Fan Jet Falcon, and Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 equipped with Liebherr or ABG–Semca valves part number (P/N) 209xx0xxx0x;. Mystere-Falcon 200; and ..... Falcon 10, equipped with Liebherr or ABG–Semca valves P/N 209xx0xxx0x..	Prior to the accumulation of 1,250 total flight hours on the regulating valve since new.	Within 1,250 flight hours after the valve was cleaned in accordance with this AD.	1,250 flight hours.
Mystere-Falcon 50; ..... Mystere-Falcon 900; and ..... Falcon 900EX (including “F900EX–EASy” and “F900DX”) Falcon 2000 and Falcon 2000EX (including “F2000EX–EASy” and “F2000DX”).	Prior to the accumulation of 1,630 total flight hours on the regulating valve since new.	Within 1,630 flight hours after the valve was cleaned in accordance with this AD.	1,630 flight hours.

**Note 1:** Guidance on inspecting for overpressure tightness on both regulating valves can be found in the applicable

airplane maintenance manual identified in Table 2 of this AD.

TABLE 2—MAINTENANCE MANUAL GUIDANCE

For affected airplanes—	See Dassault maintenance procedure—	In maintenance manual—
Falcon 10, equipped with Liebherr or ABG–Semca valves P/N 209xx0xxx0x.	21–32–01, dated July 2007 .....	Dassault Falcon 10 Maintenance Manual.
Falcon 900EX (including “F900EX–EASy” and “F900DX”) .....	21–314, dated March 2007 .....	Dassault Falcon 900EX EASy Maintenance Manual.
Falcon 2000 and Falcon 2000EX (including “F2000EX–EASy”) .....	21–314, dated May 2007 .....	Dassault Falcon 2000EX Maintenance Manual.
Falcon F2000DX .....	21–314, dated November 2007 .....	Dassault Falcon 2000DX Maintenance Manual.
Fan Jet Falcon, Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5; equipped with Liebherr or ABG–Semca valves part number (P/N) 209xx0xxx0x.	21–31–10, dated October 2007 ....	Dassault Fan Jet Falcon Maintenance Manual.
Mystere-Falcon 50 .....	21–160, dated July 2007 .....	Dassault Falcon 50/50EX Maintenance Manual.
Mystere-Falcon 200 .....	051.0, dated December 2007 .....	Dassault Falcon 200 Maintenance Manual.
Mystere-Falcon 900 .....	21–308, dated April 2007 .....	Dassault Falcon 900 Maintenance Manual.

(2) If any leak is found during any inspection required by paragraph (f)(1) of this AD, before further flight, replace the affected valve with a serviceable unit, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

**Note 2:** Guidance on replacing regulating valves can be found in the applicable airplane maintenance manual identified in Table 2 of this AD.

#### FAA AD Differences

**Note 3:** This AD differs from the MCAI as follows: Although the MCAI, in paragraph (3) of the compliance section, allows flight after

leaks are found in accordance with the master minimum equipment list (MMEL) provisions, paragraph (f)(2) of this AD requires replacing affected valves before further flight.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch,

ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they

are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) **Reporting Requirements:** For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008-0072, dated April 18, 2008, for related information.

Issued in Renton, Washington, on September 11, 2009.

Stephen P. Boyd,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-22576 Filed 9-18-09; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0789; Directorate Identifier 2008-NM-185-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Model A300 B2-1C, B2-203, B2K-3C, B4-103, B4-203, B4-2C Airplanes; Model A310 Airplanes; and Model A300 B4-601, B4-603, B4-605R, B4-620, B4-622, and B4-622R Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Cracks have been found on pylon side panels (upper section) at rib 8 on Airbus A300, A310 and A300-600 aircraft equipped with General Electric engines. Investigation of these findings indicates that this problem is likely to affect aircraft of this type design with other engine installations. This condition, if not corrected, can lead to reduced strength [structural integrity] of the pylon primary structure.

The unsafe condition is reduced structural integrity of the pylon primary structure, which could cause

detachment of the engine from the fuselage. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by November 5, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** (202) 493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0789; Directorate Identifier 2008-NM-185-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008-0181, dated October 1, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Cracks have been found on pylon side panels (upper section) at rib 8 on Airbus A300, A310 and A300-600 aircraft equipped with General Electric engines. Investigation of these findings indicates that this problem is likely to affect aircraft of this type design with other engine installations. This condition, if not corrected, can lead to reduced strength [structural integrity] of the pylon primary structure.

In order to detect any crack propagation at an early stage, thus avoiding an extensive repair, Airbus issued Service Bulletins (SB) A300-54-0075, A310-54-2018 and A300-54-6015. \* \* \*

This AD requires the implementation of this \* \* \* inspection programme.

The unsafe condition is reduced structural integrity of the pylon primary structure, which could cause detachment of the engine from the fuselage. Required actions include repetitive detailed visual inspections, or repetitive eddy current and detailed visual inspections, to detect cracks, depending on the airplane configuration, and corrective actions if necessary. The corrective actions include repairing the cracking, and

contacting Airbus for repair instructions and doing the repair, as applicable.

You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Airbus has issued Mandatory Service Bulletins A300–54–0075, A310–54–2018, and A300–54–6015, all Revision 02, all including Appendices 1, 2, and 3, all dated June 26, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Depending on the model and engine type, the initial compliance times for doing the inspections range between 9,300 flight cycles since doing the repair or modification and 22,600 flight cycles or 45,200 flight hours, whichever occurs first, since doing the repair or modification; the repetitive intervals are between 5,300 flight cycles and 33,900 flight cycles or 67,800 flight hours, whichever occurs first.

#### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 230 products of U.S. registry. We also estimate that it would

take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$73,600, or \$320 per product.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Airbus:** Docket No. FAA–2009–0789; Directorate Identifier 2008–NM–185–AD.

#### Comments Due Date

(a) We must receive comments by November 5, 2009.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300 B4–103, A300 B4–203, and A300 B4–2C airplanes, all serial numbers incorporating Airbus modification 02434 or 03599;

(2) Airbus Model A310–203, A310–204, A310–221, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes, all serial numbers, except airplanes incorporating Airbus modification 10432;

(3) Airbus Model A300 B4–601, A300 B4–603, A300 B4–605R, A300 B4–620, A300 B4–622, and A300 B4–622R airplanes, all serial numbers, except airplanes incorporating Airbus modification 10432.

#### Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Cracks have been found on pylon side panels (upper section) at rib 8 on Airbus A300, A310 and A300–600 aircraft equipped with General Electric engines. Investigation of these findings indicates that this problem is likely to affect aircraft of this type design with other engine installations. This condition, if not corrected, can lead to reduced strength [structural integrity] of the pylon primary structure.

In order to detect any crack propagation at an early stage, thus avoiding an extensive repair, Airbus issued Service Bulletins (SB) A300–54–0075, A310–54–2018 and A300–54–6015. \* \* \*

This AD requires the implementation of this \* \* \* inspection programme.

The unsafe condition is reduced structural integrity of the pylon primary structure, which could cause detachment of the engine from the fuselage. Required actions include repetitive detailed visual inspections, or repetitive eddy current and detailed visual inspections, to detect cracks, depending on the airplane configuration, and corrective

actions if necessary. The corrective actions include repairing the cracking, and contacting Airbus for repair instructions and doing the repair, as applicable.

#### Actions and Compliance

(f) Unless already done, do the following actions.

(1) For Configuration 01 airplanes as identified in the applicable service bulletin identified in Table 2 of this AD: At the applicable time specified in Table 1 of this AD, except as required by paragraphs (f)(2) and (f)(3) of this AD, perform a detailed visual inspection of the pylons 1 and 2 side

panels (upper section) at rib 8, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD. Repeat the inspection at the time specified in Table 1 of this AD.

TABLE 1—COMPLIANCE TIMES FOR CONFIGURATION 1

For model—	That have accumulated—	Inspect before the accu- mulation of—	Or within—	And repeat the inspection at intervals not to ex- ceed—
		Whichever occurs later		
A300 B2–1C, B2–203, and B2K–3C airplanes.	≤17,500 total flight cycles <sup>1</sup>	5,350 total flight cycles .....	2,500 flight cycles <sup>2</sup> .....	4,300 flight cycles.
A300 B2–1C, B2–203, and B2K–3C airplanes.	>17,500 total flight <sup>1</sup> .....	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	4,300 flight cycles.
A300 B4–103, B4–203, and B4–2C airplanes.	≤18,000 total flight cycles <sup>1</sup>	5,350 total flight cycles .....	2,000 flight cycles <sup>2</sup> .....	4,300 flight cycles.
A300 B4–103, B4–203, and B4–2C airplanes.	>18,000 total flight cycles <sup>1</sup>	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	4,300 flight cycles.
A300 B4–601, B4–603, B4–605R, B4–620, B4– 622, and B4–622R air- planes.	≤18,000 total flight cycles <sup>1</sup>	4,200 total flight cycles .....	2,000 flight cycles <sup>2</sup> .....	3,600 flight cycles.
A300 B4–601, B4–603, B4–605R, B4–620, B4– 622, and B4–622R air- planes.	>18,000 total flight cycles <sup>1</sup>	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	3,600 flight cycles.
A310–200 airplanes with GE CF6–80A3 or Pratt & Whitney engines.	≤18,000 total flight cycles <sup>1</sup>	9,700 total flight cycles or 19,400 total flight hours, whichever occurs first.	1,500 flight cycles <sup>2</sup> .....	6,700 flight cycles or 13,400 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80A3 or Pratt & Whitney engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	6,700 flight cycles or 13,400 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80C2 engines.	≤18,000 total flight cycles <sup>1</sup>	7,800 total flight cycles or 15,600 total flight hours, whichever occurs first.	1,500 flight cycles <sup>2</sup> .....	5,800 flight cycles or 11,600 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80C2 engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	5,800 flight cycles or 11,600 flight hours, whichever occurs first.
A310–300 SR <sup>3</sup> airplanes with Pratt & Whitney JT9D engines.	≤18,000 total flight cycles <sup>1</sup>	8,600 total flight cycles or 24,000 total flight hours, whichever occurs first.	1,500 total flight cycles <sup>2</sup> ...	6,700 flight cycles or 18,700 flight hours, whichever occurs first.
A310–300 SR <sup>3</sup> airplanes with Pratt & Whitney JT9D engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	6,700 flight cycles or 18,700 flight hours, whichever occurs first.
A310–300 SR <sup>3</sup> airplanes with GE engines.	≤18,000 total flight cycles <sup>1</sup>	7,000 total flight cycles or 19,600 total flight hours, whichever occurs first.	1,500 flight cycles <sup>2</sup> .....	5,700 flight cycles or 15,900 flight hours, whichever occurs first.
A310–300 SR <sup>2</sup> airplanes with GE engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	5,700 flight cycles or 15,900 flight hours, whichever occurs first.
A310–300 SR <sup>3</sup> airplanes with Pratt & Whitney 4000 engines.	≤18,000 total flight cycles <sup>1</sup>	7,000 total flight cycles or 19,600 total flight hours, whichever occurs first.	1,500 flight cycles <sup>2</sup> .....	5,800 flight cycles or 16,200 flight hours, whichever occurs first.
A310–300 SR <sup>3</sup> airplanes with Pratt & Whitney 4000 engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	5,800 flight cycles or 16,200 flight hours, whichever occurs first.
A310–300 LR <sup>4</sup> airplanes with Pratt & Whitney JT9D engines.	≤18,000 total flight cycles <sup>1</sup>	5,900 total flight cycles or 29,500 total flight hours, whichever occurs first.	1,500 flight cycles <sup>2</sup> .....	6,000 flight cycles or 30,300 flight hours, whichever occurs first.
A310–300 LR <sup>4</sup> airplanes with Pratt & Whitney JT9D engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	6,000 flight cycles or 30,300 flight hours, whichever occurs first.
A310–300 LR <sup>4</sup> airplanes with GE engines.	≤18,000 total flight cycles <sup>1</sup>	4,800 total flight cycles or 24,100 total flight hours, whichever occurs first.	1,500 flight cycles <sup>2</sup> .....	5,100 flight cycles or 25,500 flight hours, whichever occurs first.

TABLE 1—COMPLIANCE TIMES FOR CONFIGURATION 1—Continued

For model—	That have accumulated—	Inspect before the accu- mulation of—	Or within—	And repeat the inspection at intervals not to ex- ceed—
		Whichever occurs later		
A310—300 LR <sup>4</sup> airplanes with GE engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	5,100 flight cycles or 25,500 flight hours, whichever occurs first.
A310—300 LR <sup>4</sup> airplanes with Pratt & Whitney 4000 engines.	≤18,000 total flight cycles <sup>1</sup>	4,800 total flight cycles or 24,000 total flight hours, whichever occurs first.	1,500 flight cycles <sup>2</sup> .....	5,200 flight cycles or 26,300 flight hours, whichever occurs first.
A310—300 LR <sup>4</sup> airplanes with Pratt & Whitney 4000 engines.	>18,000 total flight cycles <sup>1</sup>	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles <sup>2</sup> .....	5,200 flight cycles or 26,300 flight hours, whichever occurs first.

<sup>1</sup> As of the effective date of this AD<sup>2</sup> After the effective date of this AD<sup>3</sup> “SR” applies to airplanes with average flights less than 4 flight hours.<sup>4</sup> “LR” refers to airplanes with average flights of 4 or more flight hours.

(2) For Model A300 and A300–600 airplanes that have accumulated more than 40,000 total flight hours as of the effective date of this AD: Within 250 flight cycles after the effective date of this AD, do the actions specified in paragraph (f)(1) of this AD.

(3) For Model A310 airplanes that have accumulated more than 55,500 total flight hours as of the effective date of this AD: Within 250 flight cycles after the effective date of this AD, do the actions specified in paragraph (f)(1) of this AD.

(4) For Configuration 01 airplanes, as identified in the applicable service bulletin identified in Table 2 of this AD: If a crack is found during any inspection required by this AD, before further flight, install a doubler, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

(5) For Configuration 02 airplanes, as identified in the applicable service bulletin

identified in Table 2 of this AD: At the applicable time specified in paragraph 1.E.(2) of the applicable service bulletin identified in Table 2 of this AD, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the pylons 1 and 2 side panels (upper section) at rib 8, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

(6) For Configuration 03 airplanes, as identified in the applicable service bulletin identified in Table 2 of this AD: At the applicable time specified in paragraph 1.E.(2) of the applicable service bulletin identified in Table 2 of this AD, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection, and a high frequency eddy current inspection as applicable, of the pylons 1 and 2 side panels (upper section) at rib 8, in accordance with the

Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

(7) For Configuration 02 and 03 airplanes, as identified in the applicable service bulletin identified in Table 2 of this AD: If a crack is found during any inspection required by paragraph (f)(1), (f)(5), or (f)(6) of this AD, before further flight, repair in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

(8) For all airplanes, except those in Configuration 01, as identified in the applicable service bulletin identified in Table 2 of this AD: Repeat the inspection specified in paragraph (f)(1), (f)(5), or (f)(6) of this AD, as applicable, at the intervals specified in paragraph 1.E.(2) of the applicable service bulletin identified in Table 2 of this AD.

TABLE 2—SERVICE BULLETINS

For model—	Use Airbus mandatory Service Bulletin—	Revision—	Dated—
A300 B2–1C, B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes.	A300–54–0075, excluding Appendices 1, 2, and 3	02	June 26, 2008.
A310 airplanes .....	A310–54–2018, excluding Appendices 1, 2, and 3	02	June 26, 2008.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes.	A300–54–6015, excluding Appendices 1, 2, and 3	02	June 26, 2008.

(9) Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with the service

bulletins identified in Table 3 of this AD, as applicable to airplane model, are acceptable

for compliance with the corresponding requirements of this AD.

TABLE 3—AIRBUS SERVICE INFORMATION

Service Bulletin—	Revision—	Dated—
Airbus Service Bulletin A300–54–0075 .....	Original .....	August 11, 1993.
Airbus Mandatory Service Bulletin A300–54–0075 .....	01 .....	November 9, 2007.
Airbus Service Bulletin A310–54–2018 .....	Original .....	August 11, 1993.
Airbus Mandatory Service Bulletin A310–54–2018 .....	01 .....	November 16, 2007.
Airbus Service Bulletin A300–54–6015 .....	Original .....	August 11, 1993.
Airbus Mandatory Service Bulletin A300–54–6015 .....	01 .....	November 9, 2007.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: Although the MCAI/service information allows further flight after cracks are found during compliance with certain actions, this AD requires that you repair the crack(s) before further flight.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008-0181, dated October 1, 2008; and the service bulletins identified in Table 2 of this AD; for related information.

Issued in Renton, Washington, on September 11, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-22667 Filed 9-18-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2009-0870; Directorate Identifier 2009-CE-049-AD]

RIN 2120-AA64

**Airworthiness Directives; Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Model EMB-500 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: It has been found the possibility of elevator mass balance fasteners becoming slack under certain conditions. The loose of at least two fasteners may lead to an unbalance condition, which may induce flutter on airplane elevators.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by November 5, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments

received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0870; Directorate Identifier 2009-CE-049-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued AD No.: 2009-09-01, dated September 3, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the possibility of elevator mass balance fasteners becoming slack under certain conditions. The loose of at least two fasteners may lead to an unbalance condition, which may induce flutter on airplane elevators.

The MCAI requires replacement of the nuts of the right and left elevators mass balance fasteners. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Embraer—Empresa Brasileira de Aeronáutica S.A. has issued Phenom by Embraer Service Bulletin No. 500-55-0001, dated July 24, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

## Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

## Costs of Compliance

We estimate that this proposed AD will affect 25 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$150 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$11,750, or \$470 per product.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Empresa Brasileira de Aeronáutica S.A. (EMBRAER):** Docket No. FAA-2009-0870; Directorate Identifier 2009-CE-049-AD.

## Comments Due Date

- (a) We must receive comments by November 5, 2009.

## Affected ADs

- (b) None.

## Applicability

- (c) This AD applies to EMB-500 airplanes, serial numbers 50000005, 50000006, 50000008 through 50000036, 50000038 through 50000041, 50000043 through 50000046, 50000048, and 50000053, certificated in any category.

## Subject

- (d) Air Transport Association of America (ATA) Code 27: Flight Controls.

## Reason

- (e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the possibility of elevator mass balance fasteners becoming slack under certain conditions. The loss of at least two fasteners may lead to an unbalance condition, which may induce flutter on airplane elevators.

The MCAI requires replacement of the nuts of the right and left elevators mass balance fasteners.

## Actions and Compliance

- (f) Unless already done, do the following actions:

(1) Within the next 30 days after the effective date of this AD, replace the nuts of the right-hand (RH) and left-hand (LH) elevators' mass balance fasteners with new ones of self-locking type bearing part number (P/N) MS21043-4. Do the replacements following Phenom by Embraer Service Bulletin No. 500-55-0001, dated July 24, 2009.

(2) As of 30 days after the effective date of this AD, only install self-locking type nuts, P/N MS21043-4, on the RH and LH elevators mass balance fasteners.

## FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

## Other FAA AD Provisions

- (g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective

actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) **Reporting Requirements:** For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI Agência Nacional de Aviação Civil (ANAC) Brazilian Airworthiness Directive AD No.: 2009-09-01, dated September 3, 2009, and Phenom by Embraer Service Bulletin No. 500-55-0001, dated July 24, 2009, for related information.

Issued in Kansas City, Missouri, on September 15, 2009.

**Scott A. Horn,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-22642 Filed 9-18-09; 8:45 am]

BILLING CODE 4910-13-P

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### 20 CFR Part 901

[REG-159704-03]

RIN 1545-BC82

### Performance of Actuarial Services Under the Employee Retirement Income Security Act of 1974

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments to 20 CFR part 901 relating to the enrollment of actuaries under section 3042 of the Employee Retirement Income Security Act of 1974 (ERISA). The proposed amendments would update the eligibility requirements for performing actuarial services for ERISA-covered employee pension benefit plans, including the continuing education requirements, and the standards for performing such actuarial services. The proposed amendments would affect employee pension benefit plans and the actuaries providing actuarial services to those plans.

**DATES:** Written or electronic comments must be received by November 20, 2009.

**ADDRESSES:** Send written comments to: CC:PA:LPD:PR (REG-159704-03), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-

delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-159704-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-159704-03).

**FOR FURTHER INFORMATION CONTACT:** Patrick McDonough, Executive Director, Joint Board for the Enrollment of Actuaries, (202) 622-8229 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collections of information referenced in this notice of proposed rulemaking were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-0951, relating to Enrolled Actuaries under Employee Retirement Income Security Act of 1974, published on September 7, 1988, in the **Federal Register** (53 FR 34484). There are no proposals for substantive changes to this collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background

This document contains proposed amendments to 20 CFR Part 901 under section 3042 of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), Public Law 93-406 (ERISA). Section 3042 of ERISA provides that the Joint Board for the Enrollment of Actuaries (Joint Board) shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans subject to ERISA and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. Section 3042 also provides that the Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of

an individual who fails to discharge his duties under ERISA or who does not satisfy the requirements for enrollment.

Consistent with section 3042, the Joint Board has promulgated regulations at 20 CFR part 901, addressing eligibility for enrollment, requirements for continuing education of enrolled actuaries, professional standards for performance of actuarial services under ERISA, bases for disciplinary actions and the procedures to be followed in taking those actions. Comprehensive regulations regarding section 3042 were last issued in 1988 (53 FR 34484). The Joint Board has determined that the regulations need to be updated to reflect changes in the law and in industry practice. In addition to these proposed regulations, final regulations relating to user fees for the initial enrollment and reenrollment as an enrolled actuary were published in the **Federal Register** on December 21, 2007 (72 FR 72606).

In anticipation of amending the Joint Board regulations, the Joint Board issued a Request for Information (RFI) which was published in the **Federal Register** on June 30, 2004 (69 FR 39376). The RFI specifically requested comments as to whether, and to what extent, changes should be made to the regulations in the following five areas:

1. Procedures and conditions for enrollment and reenrollments;
2. Continuing professional education (CPE) requirements;
3. Waivers of the CPE requirements;
4. Types of enrollment statuses (active, inactive, and retired); and
5. Standards of conduct.

Eight comments were received.

The current regulations prescribe various rules regarding the enrollment and reenrollment of actuaries. Section 901.13 of the regulations provides that an individual applying for enrollment must satisfy requirements for: (1) Qualifying experience; (2) basic actuarial knowledge; and (3) pension actuarial knowledge. Basic actuarial knowledge may be demonstrated by passing a Joint Board examination (or an examination acceptable to the Joint Board) regarding basic actuarial mathematics and methodology, or by earning a degree pertaining to actuarial mathematics from an accredited college. Pension actuarial knowledge must be demonstrated by passing a Joint Board examination (or an examination acceptable to the Joint Board) in actuarial mathematics related to pension plans.

Under section 901.11, an enrolled actuary must reenroll once every three years. To qualify for reenrollment an actuary must complete a minimum of 36

hours of continuing education credit within the preceding three year period.<sup>1</sup> Of these 36 hours, at least one-half must consist of core subject matter, which is subject matter directly related to the performance of actuarial services under ERISA or the Internal Revenue Code (Code). The remaining hours may consist of non-core subject matter. The regulations provide examples of both core and non-core subject matter. The regulations provide that the Executive Director of the Joint Board may review the CPE records of an enrolled actuary to verify compliance with these rules.

The regulations also provide that the continuing education must be provided as part of a "qualifying program" conducted by a "qualifying sponsor." A qualifying program is (1) a "formal program" (which requires the attendance of at least three individuals engaged in substantive pension service), (2) a correspondence or individual study program, or (3) a program utilizing teleconferencing. A qualifying sponsor is an accredited educational institution, an organization recognized by a State licensing body, or an organization recognized by the Joint Board under a sponsor agreement in effect for a given enrollment cycle. A qualifying sponsor must ensure that the CPE program satisfies various requirements regarding subject matter and administration, including recordkeeping. A separate provision applies to the recordkeeping requirements for the enrolled actuary.

In addition to attending CPE programs, an enrolled actuary may earn CPE credits by serving as an instructor or speaker at a CPE program, publishing articles on topics directly related to the CPE requirements, serving on a Joint Board advisory committee, participating in the preparation of Joint Board examinations, passing examinations sponsored by recognized organizations, or by passing a Joint Board pension law actuarial examination. These alternative means for earning CPE credits are subject to various requirements and limitations.

In the event an enrolled actuary applies for renewal but fails to comply with the applicable requirements, the regulations provide that the enrolled actuary shall be notified of his or her failure and given an opportunity to provide additional information. If the enrolled actuary fails to provide any additional information (or fails to apply for reenrollment) the actuary will be placed in inactive status for a period of

three years (beginning on the date that renewal would have been effective) and will be ineligible to perform services as an enrolled actuary during this time. An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal within three years or his enrollment will terminate. If an individual's enrollment is terminated, it can only be reestablished by satisfying the requirements for initial enrollment.

The regulations also provide that an individual may request placement in an inactive retirement status during which time the actuary will be ineligible to perform services as an enrolled actuary. An individual placed in this status may be reinstated by completing the required CPE credits for the applicable period.

Section 901.20 of the regulations prohibits an enrolled actuary from performing actuarial services under various circumstances including when the actuary is not qualified to perform the service, where the actuary has reasonable grounds to believe his or her services will be used in a fraudulent manner, or where there is a conflict of interest. The section also requires that an enrolled actuary must exercise due care, skill, and diligence in providing his or her pension actuarial services and proper utilization of the enrolled actuary designation.

#### Explanation of Provisions

The submitted comments and the related proposed changes to the regulations may be divided into the five categories of the RFI.

##### *A. Procedures for Enrollment and Reenrollment*

Various comments were received regarding the materials covered by the enrolled actuary examinations. Several comments supported broadening the scope of the material to include matters unrelated to defined benefit plans, such as the funding of post-retirement medical and life insurance benefits within the meaning of Code sections 419 and 419A. To the extent that an enrolled actuary may need to practice before the IRS in these areas, one comment suggested that an enrolled actuary should be permitted to work together with a qualified health actuary. In contrast, another comment suggested focusing the examinations exclusively on pension actuarial issues under ERISA and the Code. Some comments called for a stronger emphasis on the selection of actuarial assumptions. One such comment acknowledged that the subject is not easily tested, but made suggestions as to how this could be done.

Another comment proposed eliminating requirements for the examinations to cover specific materials and instead have the regulations grant the Joint Board the authority and flexibility to prescribe relevant and current topics.

There were also suggestions regarding the process and form of testing. One comment suggested that focusing each examination question on a single concept (instead of multiple concepts as is done currently) would enable a candidate to avoid losing credit for an entire question if he/she responds correctly to all but one of the concepts being tested. It was also suggested that the regulations allow more flexibility in the number of exams and that they clarify any time limit for their completion.

One comment recommended the use of computer-based testing and other emerging alternative testing procedures, and coordination of changes in the Joint Board examinations with related examinations offered by recognized organizations.

There was general agreement among the comments in keeping the current qualifying experience requirement unchanged although one comment suggested that the regulations require that an applicant's actuarial experience be certified by an enrolled actuary.

No changes are made under the proposed regulations to the materials covered by either the basic actuarial examination or to the examination for pension actuarial knowledge. The Joint Board believes that the provisions of the current regulations regarding the general form and structure of the examinations, as updated from time to time, are adequate.

The proposed regulations, however, would require that the pension actuarial examination must be completed within the ten-year period immediately preceding the date of application for initial enrollment. The Joint Board believes such a requirement is needed because of the frequent changes in pension law and a need for an enrolled actuary to have current knowledge of pension requirements.<sup>2</sup> On the other hand, because the material in the basic actuarial examination is generally mathematical in nature and is not affected by changes in pension law, a similar rule for the basic actuarial examination would not apply.

With respect to computer-based testing, the Joint Board acknowledges

<sup>1</sup> The regulations also include transitional rules for reenrollment cycles prior to 1993. This summary refers to the rules currently applicable.

<sup>2</sup> This rule would be applied prospectively. Accordingly, the successful completion of a pension actuarial examination prior to the effective date of this regulation will be recognized for ten years after such effective date.

that new technologies can serve many uses. The Joint Board believes, however, that the language in the current regulations would not preclude the use of computer-based testing and does not believe it is necessary to amend the regulations to specify the format for taking examinations.

With respect to qualifying experience, the proposed regulations would require that all actuarial and pension actuarial experience be certified in writing by individuals with knowledge of the individual's experience. If the individual's supervisor is not an enrolled actuary, the pension actuarial experience must be certified by both the supervisor and an enrolled actuary with knowledge of the individual's pension experience. As in the current regulations, the qualifying experience must have been completed within the last 10 years before the application for enrollment.

#### *B. CPE Requirements*

Several comments were received regarding the distinction between core and non-core subject matter. One comment suggested that the distinction between core and non-core subject matter be eliminated for purposes of meeting CPE requirements as the distinction does not serve a useful purpose in a rapidly evolving financial marketplace and regulatory environment. The comment added that, assuming these core/non-core categories were kept, additional guidance should be provided as to what constitutes core and non-core credit subject matter.

Other comments suggested that the list of core subject matter be expanded to include such topics as pension accounting, Code sections 419, 419A and 420, risk theory, and finance. Another comment specifically supported adding pension accounting, but objected to counting investment topics as core topics. Another comment recommended including various additional topics in an expanded list of acceptable non-core topics such as defined contribution plans, Social Security and Medicare benefits, pension valuation software programming, other accounting, risk management and new emerging topics in actuarial practice. Another comment recommended replacing the core/non-core classification with three new categories: (1) Retirement plan rules under ERISA and the Code (including, but not limited to, sections 401 through 420), (2) funding issues in relation to defined benefit plans, and (3) actuarial ethics. This comment also suggested requiring at least 45 hours of CPE credit (with a minimum of three hours in funding

issues and in actuarial ethics) and granting the Joint Board the authority to designate additional mandatory areas of CPE. One comment recommended that the definition of "core" subject matter should continue to be focused on pension actuarial services under ERISA and the Code and opposed any expansion of the definition of core subject matter.

Some comments suggested distinguishing between CPE credits required early in an actuary's career, where core courses may be necessary to help cement the actuary's understanding of actuarial principles, and credits needed later in an actuary's career. One comment suggested, for example, that 18 hours of core CPE credit be required for the first two enrollment cycles and that 12 hours of core credit be required in subsequent enrollment cycles. It was also suggested that a minimum of three hours of ethics be required.

Many comments, particularly from sponsors of CPE programs, requested flexibility in the use of the web and other alternatives to formal meetings. For example, some suggested that computer-based self-study or distance learning programs and webcasts should be included as qualifying CPE programs. A number of comments sought additional guidance from the Joint Board regarding the use of webcasts and self-study programs to earn CPE credits. The issues raised in this regard included the need for appropriate safeguards and mechanisms to validate participation by the actuary. In recognition that future technological advances are almost certain to occur, another comment recommended that the regulations be revised to allow a qualifying sponsor to apply to the Joint Board for approval to use those technologies. The comment also suggested that the regulations specifically give the Joint Board the authority to permit the use of those emerging technologies, with acceptance of the technology being communicated via a public announcement without requiring the Joint Board to further update the regulations.

One comment recommended permitting actuaries to attest in their professional capacities to their completion of continuing education credit, and the establishment of an appropriate audit process to oversee compliance with the rules. The comment further recommended that the Joint Board undertake random audits of CPE records to ensure compliance with the attestation requirement. Similarly, another comment recommended an enrolled actuary should be required to certify that he/she has satisfied certain

CPE requirements and to provide information regarding whether or not he/she has been disciplined or is under disciplinary review by any professional body.

One comment suggested that the requirement that a formal program be attended by at least three individuals engaged in substantive pension service may be satisfied, in the case of programs viewed simultaneously at multiple locations via teleconference, web cast, conference call or other similar technology, if the total combined audience at all locations contains at least three such individuals.

Several comments recommended various electronic means to retain records and to streamline the application process. One comment recommended that a qualifying sponsor be required to keep electronic copies of the session materials, but make them accessible to the Joint Board should they need to be reviewed or audited for content. Another comment recommended that the Joint Board provide for on-line renewal of enrollment and an on-line process for an actuary to respond to an audit of his/her CPE credits. A third comment recommended that all records be maintained electronically and that CPE credit hours be provided and stored electronically, enabling the Joint Board to have access to the credit hours earned by actuaries at all times and reducing the volume of hard copy recordkeeping.

One comment recommended extending the enrollment cycle to 5 years with an increase in the required CPE credits to 60 hours, including a minimum of 8 hours in each year of the cycle. Another comment suggested that the current CPE requirement (36 credit hours over a three year cycle) is appropriate, with some possible refinements such as either reducing the credits that could be earned for each hour as a presenter and increasing the current limit on such credits as a portion of total CPE; allowing CPE credits as a co-author (if not the primary author); or withholding session credit to an attendee for inattentive or disruptive conduct.

One comment suggested that the regulations should provide guidance on renewal of approval for qualifying sponsors. There were a few comments that suggested changing the enrollment cycle for qualifying sponsors so as not to be coterminous with the enrolled actuary enrollment cycle or to increase the number of years in the sponsor enrollment cycle. Another comment suggested the regulations be amended to allow the Joint Board to periodically publish a list of qualifying sponsors in

order to facilitate a search for programs that are eligible for CPE credits.

The Joint Board continues to believe that an important thrust of CPE should be core subject matter that is directly related to pension actuarial services under ERISA and the Code, an area in which an enrolled actuary must maintain minimum competencies at all times. The Joint Board also believes that there are other relevant non-core topics that enhance the knowledge of enrolled actuaries and keep them current in matters related to the performance of pension actuarial services. The proposed regulations would provide a revised definition of "core" subject matter which the Joint Board believes will be helpful in distinguishing between core and non-core subject matter. The lists of core and non-core subject matter are generally unchanged, but the proposed regulations would provide that all materials included on the syllabi of any of the pension actuarial examinations offered by the Joint Board during the current and immediately preceding enrollment cycles would constitute core subject matter. The Joint Board also invites further comments in this area.

With respect to CPE programs, the proposed regulations would clarify the permissible forms of qualifying programs. The regulations would also retain the use of alternative means for completion of CPE, but continue to limit the portion of total CPE that may be earned under these alternative approaches. The regulations would also add a provision that awards CPE credits to a co-author of a publication or a person listed as a major contributor to a publication.

The proposed regulations would also clarify the responsibilities of program sponsors by requiring that those who submit requests to the Executive Director to be recognized as qualifying sponsors include sufficient information in their requests to establish that their programs would satisfy the applicable requirements for qualifying programs.

The Joint Board agrees that new technologies allow enrolled actuaries and qualifying sponsors more flexibility in their choices of form and delivery of CPE programs and should be reflected when granting CPE credits. However, new technologies also raise new challenges regarding verification of attendance and completion of CPE under certain programs. Therefore, the proposed regulations would allow qualifying programs to include both formal programs as well as correspondence or individual study programs (including audio and/or video taped programs) and teleconferencing

(including web casts) provided that the qualifying program meets certain requirements with regard to verification of attendance and measurement of completion.

The Joint Board also agrees that recordkeeping provisions under the current regulations should be updated. The proposed regulations would amend the recordkeeping requirements to place more reliance on qualifying sponsors to maintain records of the course content since they generally maintain records of that content in any event. The enrolled actuaries will now be required only to retain certificates of completion and/or instruction as evidence of satisfaction of CPE requirements. In addition, the proposed regulations would expressly allow the Joint Board to request CPE records from the enrolled actuary and the qualifying sponsor. The regulations do not reflect any changes in the method used to provide information to the office of the Executive Director. However, the Board is willing to consider web-based applications or other technology for this information in the future.

With respect to the renewal cycle and required CPE credits, the Joint Board continues to believe that the current three-year renewal period is appropriate. The Board, however, proposes to delay the start date for the renewal cycle for qualifying sponsors by one year after the renewal cycle for enrolled actuaries in order to ease the administrative demands on the Executive Director and his staff, and to facilitate renewals by qualifying sponsors.

The proposed regulations would also retain the current requirement for a total of 36 hours of CPE (half of which must be core subject matter) for the initial three-year enrollment renewal cycle, for individuals who renew on a timely basis. Recognizing, however, that experienced actuaries generally do not need to focus on core topics as much as newly enrolled actuaries, the proposed regulations would reduce the number of core CPE credits required after the enrolled actuary's initial enrollment renewal from 18 required core hours to 12 required core hours. The Joint Board also believes that enrolled actuaries should maintain high professional standards and thus proposes a new requirement that a minimum of two hours of core CPE be allocated to ethical standards in each enrollment cycle. Topics that would meet this requirement include (but are not limited to) discussions of professional codes of conduct, professional responsibilities, and any of the topics addressed in

section 901.20 of these proposed regulations.

The Joint Board believes that formal programs should continue to play a prominent role in fulfilling CPE requirements because of the additional learning opportunities that occur in face-to-face interactions with other enrolled actuaries. Therefore, no change is proposed to the current requirement that a formal program must have at least three individuals in attendance who are engaged in substantive pension service. Furthermore, the proposed regulations would add a new requirement that a minimum of one-third of the required total CPE credits must be in the form of formal programs.

The proposed regulations would also retain current limits on the maximum number of CPE credits that can be obtained under alternative CPE programs, such as authoring published articles (25 percent), as a percentage of total CPE per enrollment cycle. Under the proposed regulations, however, college courses will no longer be available as an alternative program for purposes of fulfilling CPE requirements (unless they meet the requirements of a qualifying program) due to the practical difficulties in evaluating course curricula and the qualifications of the instructors. Despite the elimination of the specific list of conditions that would support a waiver, circumstances such as extended active military duty will continue to constitute strong evidence of the type of extraordinary circumstances that would justify a waiver.

### *C. Waivers of the CPE Requirements*

One comment suggested expanding the list of conditions for which a waiver from CPE requirements may be granted to include parental leave. Another comment recommended that applications for a waiver of the CPE requirements be accepted during the normal enrollment renewal process, subject to the Joint Board's discretion to accept late filings. A third comment did not perceive problems with the current waiver process and standards. There were no other specific recommendations regarding this issue except in conjunction with proposals regarding changes in enrollment status.

The Joint Board believes that it is essential for practicing actuaries to keep their knowledge current, particularly given the frequent changes in pension law, court decisions, and other factors that affect an enrolled actuary's practice. Accordingly, and in light of the expanded varieties of acceptable CPE programs, the proposed regulations would eliminate the list of reasons for

which a CPE waiver may be granted and provide instead that a waiver from the CPE requirements may be granted only under extraordinary circumstances and only upon submission of evidence that every effort was made during the entire renewal cycle to complete such requirements. Despite the elimination of the specific list of conditions that would support a waiver, circumstances such as extended active military duty will continue to constitute strong evidence of the type of extraordinary circumstances that would justify a waiver.

#### *D. Enrollment Status*

Several comments were directed to the status for "inactive retirement" which may be elected by an actuary. One comment suggested that the Joint Board allow for some flexibility in the renewal process in order to reduce the need for individuals to request inactive retirement status and to ensure a minimal period of disruption of actuarial services to plans and employers. For example, it was recommended that any CPE credit hours completed between December 31 (or the end of the enrollment period by which CPE credits must be earned for that period) and the date the application for renewal is filed be permitted to be used to satisfy the CPE requirement for renewal of enrollment effective April 1. Thus, the comment stated that an enrolled actuary who files an application for renewal after March 1 due to delayed completion of the CPE requirement should be eligible to perform services as an enrolled actuary 30 days after the application filing date unless notified otherwise by the Joint Board. However, these delayed CPE credits would not be permitted to be applied to another enrollment cycle.

Under the current regulations, an actuary in inactive retirement status is ineligible to perform services as an enrolled actuary, but the actuary may be reinstated by completing the "required continuing professional education credits for the applicable enrollment cycle" regardless of how long the actuary was inactive. Several comments stated that this status, and the requirements for reinstatement, were unclear. Some comments suggested that inactive retirement status be available for no more than three consecutive three-year enrollment cycles, but that if the individual has been retired for less than three three-year enrollment cycles, the actuary would be allowed to "back fill" any missing CPE requirements.

One comment recommended that the regulations be revised to extend inactive status to six years (or a maximum of two

three-year enrollment cycles). The comment stated that three years is too short since an enrolled actuary often leaves the workforce for child-rearing or other reasons, and should not be discouraged from resuming his/her career. Another comment recommended that the regulations be clarified to specify more clearly the CPE requirements for reinstatement as of various points of time during the following three-year cycle, and the relationship of those CPE requirements with the requirements for ongoing renewal after reinstatement. One comment suggested special catch-up requirements where an individual would have to "back fill" any missing CPE requirements (for example, 108 hours of CPE credits would be required for an actuary who had missed two enrollment renewal cycles, with 36 credits required for each inactive enrollment cycle plus 36 credits required for the enrollment cycle immediately preceding the date on which the individual returns to active status). The comment suggested that any individual who fails to complete the necessary back fill would need to follow current reenrollment procedures. The comment further stated that, depending on the circumstances, a waiver of some CPE requirements may be permitted for an enrolled actuary going from inactive to active status.

The Joint Board agrees that the current rules relative to the different inactive statuses warrant simplification. The proposed regulations would limit enrollment statuses to only two categories, "active" or "inactive," with special provisions for reinstatement depending on the length of the period during which an enrolled actuary is in inactive status and for those situations where an actuary's status is terminated for cause. An enrolled actuary who timely renews his/her enrollment would be in active status. An enrolled actuary who fails to meet requirements for timely renewal of enrollment would be in inactive status. While in inactive status, an enrolled actuary would be prohibited from performing pension actuarial services under ERISA and the Code.

The Joint Board also believes that the longer an actuary has been in inactive status, the less likely it is that he/she has kept up with current developments or had the current work experience necessary to competently function as an enrolled actuary. The proposed regulations would increase the CPE requirements and/or add experience requirements for reenrollment for actuaries in inactive status, with more stringent requirements applying to those

who have been inactive for a longer period of time. Under the proposed regulations, an individual who applies for reenrollment during his or her first inactive enrollment cycle would need to complete 36 hours of CPE (including CPE credits from the immediately preceding enrollment cycle) in order to qualify for reenrollment. An individual who applies during the second inactive enrollment cycle would need to complete 48 hours of CPE (counting only those credits earned during the first and second inactive enrollment cycles) and must also have 18 months of certified responsible pension actuarial experience since the start of the first inactive cycle. An individual who applies during the third active enrollment cycle would need to complete 60 hours of CPE (counting only those credits earned during the second and third inactive enrollment cycles) and have 18 months of certified responsible pension actuarial experience since the start of the second inactive cycle. The proposed regulations present some examples to illustrate these changes.

Furthermore, the proposed regulations would limit the time that an enrolled actuary can be in inactive status and remain eligible to apply for reenrollment. If the enrolled actuary does not qualify and apply for reenrollment after being in inactive status for three enrollment cycles, he or she would be placed in terminated status and would have to meet the requirements for initial enrollment (including the applicable examination requirements) in order to be reinstated as an enrolled actuary.

Notwithstanding these general rules for reenrollment from inactive status, any application for reenrollment from termination status due to disciplinary reasons would be subject to special consideration by the Executive Director. An individual placed in inactive status prior to the effective date of the final regulations would be deemed to have been placed in inactive status on that date and thus considered to be in his/her first inactive enrollment cycle on that date for purposes of determining the requirements for a return to active status.

#### *E. Standards of Conduct*

One comment states that the Joint Board has not been very active in investigating and disciplining enrolled actuaries whose performance does not meet applicable standards. One comment suggested that the Joint Board consider utilizing the Actuarial Board for Counseling and Discipline as an independent contractor to investigate

complaints. Alternatively, it was recommended that the Joint Board either require an enrolled actuary to become a member of a professional actuarial organization as a condition of enrollment (thereby subjecting the member to the Actuarial Code of Professional Conduct (Code of Conduct) to which all the major actuarial organizations in the U.S. and Canada subscribe), or incorporate the Code of Conduct into the regulations.

Another comment stated that, unlike other professionals, an enrolled actuary is not compelled to operate within certain standards by the underlying threat that failure to do so will result in the loss of his/her license to practice in the profession. Even if an enrolled actuary is a member of an actuarial organization and subject to that organization's disciplinary procedures, this comment suggested that the Joint Board not rely on these organizations in this area, but rather that the Joint Board more actively utilize its current authority under ERISA to supervise and evaluate the provision of actuarial services and to discipline enrolled actuaries. This comment also suggested that the Joint Board periodically publish information regarding the nature and types of complaints received, the number of actuaries disciplined and the nature of the discipline. This comment indicated that publicizing such information would reassure the public that complaints are being acted upon and encourage compliance with the applicable standards.

Another comment recommended that the Board coordinate with other actuarial or governmental bodies, for example, the IRS or PBGC, so that if any other body finds that an enrolled actuary has violated the standards of conduct, performance or practice relating to the performance of actuarial services, including all applicable regulations and revenue rulings, the respective body will refer the offending individual to the Joint Board for possible suspension or termination of his/her enrollment.

One comment reiterated a concern that actuaries who do not have significant credentials in the health tax area should not be encouraged to engage in unqualified practice under the Code, or in an area where they do not meet the qualification standards in accordance with the Code of Conduct. The commentator recommended that the Joint Board outline those areas where the enrolled actuary may rely on the expertise of another actuary and any qualifications needed for those other actuaries as appropriate.

One comment stated that the standards of performance of actuarial services set forth in current regulations are adequate. The comment suggested, however, in the event the Board were to decide that these standards need to be expanded, that any differences from the Code of Conduct be kept to a minimum or, wherever possible, any expanded regulatory standards should incorporate the applicable parts of the Code of Conduct.

In light of the responses to the RFI regarding actuarial standards of performance, the proposed regulations would clarify existing provisions in this area and add some new provisions. Specifically, the proposed regulations would add a new general standard that would require enrolled actuaries to perform actuarial services in accordance with all applicable laws and the relevant standards of professional responsibility and, as under the current regulations, require that enrolled actuaries not perform any actuarial services where those services may be used in a fraudulent manner. The proposed regulations would also provide that an enrolled actuary must report any material violation of this section by another enrolled actuary to the Executive Director of the Joint Board. For example, an enrolled actuary that replaces another enrolled actuary as a plan's actuary and discovers that the previous actuary had signed a Schedule B that listed plan contributions that the previous actuary knew had not been made would be required to report this violation to the Executive Director.

The proposed regulations would also modify the rules regarding conflicts of interest. The regulations currently provide that in any situation in which an enrolled actuary has a conflict of interest with respect to the performance of actuarial services, the actuary shall not perform such services until full disclosure of the conflict has been made to the affected parties. The proposed regulations would add that such disclosure must be made in writing and that the affected parties must agree in writing to the enrolled actuary performing the services. The proposed regulations would also provide that the actuary must reasonably conclude that his or her ability to act impartially is not impaired by the conflict and the performance of such services is not prohibited by law.

The current regulations also provide that an enrolled actuary must exercise due care, skill, prudence, and diligence to ensure that all actuarial assumptions are reasonable in the aggregate and that all calculations are accurately carried out. To reflect changes made in the law

made by the Pension Protection Act of 2006, Public Law 109-280, the proposed regulations would provide that an enrolled actuary must exercise sufficient due care, diligence, skill, and prudence as is required to ensure that all actuarial assumptions are reasonable individually and in combination. The proposed regulations would also require that all calculations not only be accurately carried out but also properly documented.

The proposed regulations would also expressly expand the due diligence requirement into other areas. For example, the proposed regulations would require that an enrolled actuary must exercise due diligence in preparing documents to be filed with Federal and State entities and in determining the correctness of oral and written representations to those entities and to clients. This section of the proposed regulations follows section 10.22(a) of the regulations governing practice before the IRS (Circular 230) except to include other agencies where enrolled actuaries typically file documents or make representations in connection with the performance of pension actuarial services.

The proposed regulations would also include other provisions similar to those in Circular 230 regarding solicitations of employment. For example, the current regulations provide that an enrolled actuary shall not advertise his or her status as an enrolled actuary in any solicitation related to the performance of actuarial services and shall not employ or share fees with any individual who so solicits. The proposed regulations would modify this prohibition by adding a rule similar to that in section 10.30(a)(1) of Circular 230 by providing that an enrolled actuary may not use any form of public or private solicitation containing a false, fraudulent, or misleading claim. Also, as provided in section 10.30(a)(2) of Circular 230, the proposed regulations would provide that an enrolled actuary may not make uninvited solicitations of employment if the solicitation violates Federal or State law and any lawful solicitations must clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient of the solicitation.

The proposed regulations would also include provisions similar to those in Circular 230 regarding the prompt disposition of pending matters and the return of client records, except the Circular 230 rules would be modified for purposes of these regulations to reflect the fact that enrolled actuaries deal with government entities in

addition to the IRS. Thus, as under section 10.23 of Circular 230, the proposed regulations would provide that an enrolled actuary may not unreasonably delay the prompt disposition of any matter before the IRS, but the proposed regulations would extend the rule for these purposes to matters before the Department of Labor, the PBGC and other applicable Federal and State entities. Similarly, the proposed regulations would adopt provisions similar to those in section 10.27 of Circular 230 regarding the return and retention of client's records, but they would define "records of the client" for these purposes to include documents related to legal obligations in addition to Federal tax obligations. The provisions of these proposed regulations would not modify the Circular 230 regulations but would apply rules to enrolled actuaries in addition to those already applicable under Circular 230.

The Joint Board believes that the current structure and procedures for the disciplining of enrolled actuaries are adequate and consistent with Federal statutes and so is not proposing any changes to the existing regulations in this regard. The Joint Board emphasizes that anyone, including other members of the profession and plan officials and participants, can make referrals to the Executive Director regarding any suspicious activity or conduct that may warrant further investigation or discipline. The Joint Board is also considering in a separate action amending the application forms for enrollment and renewal to require additional information that may be relevant to standards of performance, including any record of violations of the law or prior misconduct, and requests comments in that regard.

#### Proposed Effective/Applicability Date

These regulations are proposed to generally apply 30 days after the date these regulations are published as final regulations in the **Federal Register**. However, section 901.11 regarding the enrollment of actuaries would apply to the enrollment cycle beginning January 1, 2011, and ending December 31, 2013, and to all subsequent enrollment cycles.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and therefore the Regulatory Flexibility Act (5 U.S.C.

chapter 6) does not apply. This notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Joint Board specifically requests comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Carolyn Zimmerman, IRS Employee Plans, Tax Exempt and Government Entities Division. However, other personnel from the Joint Board and the IRS participated in their development.

#### List of Subjects in 20 CFR Part 901

Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974.

#### Proposed Amendments to the Regulations

Accordingly, 20 CFR part 901 is proposed to be amended as follows:

#### PART 901—REGULATIONS GOVERNING THE PERFORMANCE OF ACTUARIAL SERVICES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

**Paragraph 1.** The authority citation for part 901 continues to read in part as follows:

**Authority:** These rules are issued under authority of 88 Stat. 1002; 29 U.S.C. 1241, 1242. See also 5 U.S.C. 301; 31 U.S.C. 330; and 31 U.S.C. 321.

**Par. 2.** Section 901.0 is amended by revising the second sentence to read as follows:

#### § 901.0 Scope.

\* \* \* Subpart A of this part sets forth definitions and eligibility to perform actuarial services; subpart B of this part

sets forth rules governing the enrollment of actuaries; subpart C of this part sets forth standards of performance to which enrolled actuaries must adhere; subpart D of this part sets forth rules applicable to suspension and termination of enrollment; and subpart E of this part sets forth general provisions.

**Par. 3.** Section 901.1 is amended by:

- A. Adding new paragraph (d)(5).
- B. Revising paragraph (g).
- C. Adding new paragraphs (i), (j) and (k).

The revisions and additions read as follows:

#### § 901.1 Definitions.

\* \* \* \* \*

(d) \* \* \*

(5) Selection of assumptions.

\* \* \* \* \*

(g) *Enrolled actuary* means an individual who has satisfied the standards and qualifications set forth in this part and who has been approved by the Joint Board for the Enrollment of Actuaries (the Joint Board), or its designee, to perform actuarial services required under ERISA or the regulations.

\* \* \* \* \*

(i) *Certified responsible actuarial experience* means responsible actuarial experience of an individual that has been certified in writing by the individual's supervisor.

(j) *Certified responsible pension actuarial experience* means responsible pension actuarial experience of an individual that is certified in writing by the individual's supervisor if the supervisor is an enrolled actuary. If the individual's supervisor is not an enrolled actuary, the pension actuarial experience must be certified in writing by both the supervisor and an enrolled actuary with knowledge of the individual's pension actuarial experience.

(k) *Enrollment cycle* means the three year period from January 1, 2011, to December 31, 2013, and every three-year period thereafter.

**Par. 4.** Section 901.10 is amended by revising paragraph (a) to read as follows:

#### § 901.10 Application for enrollment.

(a) *Form.* As a requirement for enrollment, an applicant shall file with the Executive Director of the Joint Board (the Executive Director) a properly executed application on a form or forms specified by the Joint Board, and shall agree to comply with these regulations and any other guidance as required by the Joint Board. A reasonable non-refundable fee may be charged for each application for enrollment filed.

\* \* \* \* \*

**Par. 5.** Section 901.11 is amended by:

- A. Revising the first sentence of paragraph (a).
  - B. Revising paragraphs (c) and (d).
  - C. Revising paragraphs (e) introductory text, (e)(1) and (e)(2)(i).
  - D. Revising the last sentence of paragraph (e)(2)(ii).
  - E. Adding new paragraphs (e)(2)(iv), (v), and (vi).
  - F. Removing paragraph (e)(3).
  - G. Revising paragraphs (f)(1) introductory text, and (f)(1)(i).
  - H. Revising the second sentence of paragraph (f)(1)(ii), and paragraph (f)(1)(iv).
  - I. Revising paragraph (f)(2).
  - J. Adding paragraph (f)(3).
  - K. Revising paragraph (g).
  - L. Removing the last two sentences of paragraph (h)(2).
  - M. Removing paragraph (l).
  - N. Redesignating paragraphs (i), (j), and (k) as paragraphs (j), (k), and (l), respectively.
  - O. Adding and reserving new paragraph (i).
  - P. Revising newly redesignated paragraphs (j) and (k).
  - Q. Revising the first sentences of newly redesignated paragraphs (l)(1) and (l)(2), and the second sentence of newly redesignated paragraph (l)(3).
  - R. Revising newly redesignated paragraphs (l)(4), (l)(5), (l)(6), and (l)(7), and the first sentence of newly redesignated paragraph (l)(9).
  - S. Revising paragraph (n).
  - T. Adding new paragraphs (o) and (p).
- The revisions and additions read as follows:

**§ 901.11 Enrollment procedures.**

(a) *Enrollment.* The Joint Board shall enroll each applicant it determines has met the requirements of these regulations, and any other guidance as required by the Joint Board, and shall so notify the applicant. \* \* \*

\* \* \* \* \*

(c) *Rosters.* The Executive Director shall maintain rosters of all actuaries who are duly enrolled under this part and of all individuals whose enrollment has been suspended or terminated, or who are in inactive status. The Executive Director may publish any or all of these rosters, including display on the Joint Board's Web site, to the extent permitted by law.

(d) *Renewal of enrollment.* To maintain active enrollment to perform actuarial services under ERISA, each enrolled actuary is required to have his/her enrollment renewed as set forth herein.

(1) All enrolled actuaries must file an application for renewal of enrollment on the prescribed form between October 1,

2010, and March 1, 2011, and between October 1 and March 1 of every third year thereafter.

(2) The effective date of renewal of enrollment for individuals who file complete renewal applications by March 1 is the April 1 immediately following the date of application. The effective date of renewal of enrollment for individuals who file complete renewal applications after March 1 is the date the notice of renewal is mailed to that individual by the Joint Board.

(3) Forms required for renewal may be obtained from the Executive Director.

(4) A reasonable non-refundable fee may be charged for each application for renewal of enrollment filed.

(e) *Condition for renewal: Continuing professional education.* To qualify for renewal of enrollment, an enrolled actuary must certify, on the form prescribed by the Executive Director, that he/she has completed the applicable minimum number of hours of continuing education credit required by this paragraph (e) and satisfied the recordkeeping requirements of paragraph (j) of this section.

(1) *Transition rule for renewal of enrollment effective April 1, 2011.* (i) A minimum of 36 hours of continuing education credit must be completed between January 1, 2008 and December 31, 2010. Of the 36 hours, at least 18 must consist of core subject matter; the remainder may be non-core subject matter.

(ii) An individual who receives initial enrollment in 2008 or 2009 must satisfy the following requirements by December 31, 2010: Those enrolled during 2008 must complete 24 hours of continuing education; those enrolled during 2009 must complete 12 hours of continuing education. At least one-half of the applicable hours must consist of core subject matter; the remainder may consist of non-core subject matter. For purposes of this paragraph (e), credit will be awarded for continuing education completed after January 1 of the year in which initial enrollment was received.

(iii) An individual who receives initial enrollment during 2010 is exempt from the continuing education requirements until the next enrollment cycle, but must file a timely application for renewal.

(2) *For renewal of enrollment effective April 1, 2014, and every third year thereafter.* (i) A minimum of 36 hours of continuing education credit must be completed between January 1, 2011 and December 31, 2013, and between January 1 and December 31 for each three year period subsequent thereto.

(ii) \* \* \* For purposes of this paragraph (e), credit will be awarded for continuing education completed after January 1 of the year in which initial enrollment was received.

\* \* \* \* \*

(iv) For an individual who was initially enrolled before January 1, 2008 (and who has therefore completed at least one full enrollment cycle as of January 1, 2011), at least 12 hours of the 36 hours of continuing education required for each enrollment cycle must consist of core subject matter; the remainder may consist of non-core subject matter.

(v) For an individual who was initially enrolled on or after January 1, 2008, at least 18 hours of his or her 36 hours of continuing education required for the first full enrollment cycle must consist of core subject matter. Thereafter, for such individuals, for each subsequent enrollment cycle at least 12 hours of the 36 hours must consist of core subject matter. In each instance, the remainder may consist of non-core subject matter.

(vi) As part of the core subject matter required for each enrollment cycle, an individual must complete a minimum of two hours of continuing education credit relating to ethical standards.

(f) *Qualifying continuing education—*  
(1) *In general.* To qualify for continuing education credit an enrolled actuary must complete his/her hours of continuing education credit under a qualifying program, within the meaning of paragraph (f)(2) of this section, consisting of core and/or non-core subject matter. In addition, a portion of the continuing education credit may be earned under the provisions of paragraph (g) of this section. In any event, no less than 1/3 of the total hours of continuing education credit required for an enrollment cycle must be obtained by attending in person a formal program or programs, within the meaning of paragraph (f)(2)(ii)(A) of this section.

(i) Core subject matter is program content and knowledge that is integral and necessary to the satisfactory performance of pension actuarial services and actuarial certification under ERISA and the Internal Revenue Code. Such core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, titles I, II, and IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualification of pension plans, maximum deductible contributions, tax treatment of distributions from qualified

pension plans, excise taxes related to the funding of qualified pension plans and standards of performance (including ethical standards) for actuarial services. Core subject matter includes all materials included on the syllabi of any of the pension actuarial examinations offered by the Joint Board during the applicable enrollment cycles. For this purpose, the applicable enrollment cycles are the current enrollment cycle and the enrollment cycle immediately preceding the current enrollment cycle.

(ii) \* \* \* Examples include economics, computer programming, pension accounting, investment and finance, risk theory, communication skills, and business and general tax law.

(iv) The same course of study cannot be used more than once within a given 36-month period to satisfy the continuing education requirements of these regulations. A program or session bearing the same or a similar title to a previous one may be used to satisfy the requirements of these regulations if the major content of the program or session differs substantively from the previous one.

(2) *Qualifying Program*—(i) *In general*. A qualifying program is a course of learning that—

- (A) Is conducted by a qualified sponsor, within the meaning of paragraph (f)(3) of this section;
- (B) Is developed by individual(s) qualified in the subject matter;
- (C) Covers current subject matter;
- (D) Includes written outlines or textbooks;
- (E) Is taught by instructors, discussion leaders, and speakers qualified with respect to the course content;
- (F) Includes means for evaluation by the Joint Board of technical content and presentation;
- (G) Provides a certificate of completion, within the meaning of paragraph (f)(3)(iv) of this section, to those who have successfully completed the program; and
- (H) Provides a certificate of instruction, within the meaning of paragraph (f)(3)(v) of this section, to those who have served as instructors, discussion leaders, or speakers.

(ii) *Types of qualifying programs*. Qualifying programs may be formal programs, correspondence or individual study programs, and teleconferencing:

(A) *Formal programs*. Formal programs are programs that meet all of the requirements of paragraph (f)(2)(i) of this section and also require physical attendance by at least three individuals engaged in substantive pension service

in addition to the instructor, discussion leader, or speaker.

(B) *Correspondence or individual study programs (including audio and/or video taped programs)*. Correspondence or individual study programs are programs completed on an individual basis by the enrolled actuary. Such programs are qualifying programs if they meet all of the requirements of paragraph (f)(2)(i) of this section and also provide a means for measuring completion by the participants (for example, a written examination).

(C) *Teleconferencing*. Teleconferencing or other communications technologies (including webcasting) are qualifying programs if they meet all of the requirements under paragraph (f)(2)(i) of this section and either—

- (1) Include a sign-on/sign-off capacity or similar technique to verify attendance; or
- (2) Provide a means for measuring completion by the participants (for example, a written examination).

(3) *Qualifying sponsors*—(i) *In general*. Qualifying sponsors are organizations recognized by the Executive Director whose programs offer opportunities for continuing professional education in subject matter within the scope of this section. A sole proprietor shall not be treated as a qualifying sponsor for purposes of this section.

(ii) *Sponsor agreements*. Organizations requesting qualifying sponsor status shall file sponsor agreement requests with the Executive Director and furnish information in support of such requests as deemed necessary for approval by the Executive Director. Such information shall include sufficient information to establish that all programs designated as qualifying programs offered by the qualifying sponsor will satisfy the requirements of paragraph (f)(2) of this section.

(iii) *Sponsor enrollment cycle*. Qualifying sponsor agreements will remain in effect for no more than one sponsor enrollment cycle. The Executive Director shall publish the names of such sponsors on a periodic basis.

(A) For sponsor agreements effective on or after January 1, 2008, and before January 1, 2012, the applicable sponsor enrollment cycle will end December 31, 2011.

(B) For sponsor agreements effective on or after January 1, 2012, the applicable sponsor enrollment cycle will be three years and will begin on January 1 and end on December 31 at the end of the three year period. Each such three year period is a “sponsor

enrollment cycle.” The sponsor enrollment cycle is not affected by when during the enrollment cycle the sponsor agreement became effective. For example, for sponsor agreements effective on or after January 1, 2012 and before January 1, 2015, the applicable sponsor enrollment cycle will end December 31, 2014. The subsequent sponsor enrollment cycle will begin January 1, 2015, and end December 31, 2017.

(iv) *Certificates of completion*. Qualifying sponsors shall furnish to each attendee successfully completing a program presented by such qualifying sponsor a certificate listing the following information:

- (A) The name of the attendee.
- (B) The name of the sponsoring organization.
- (C) The title, location, and speaker(s) of each session attended.
- (D) The dates of the program completed.
- (E) The total credit hours claimed and the total core and non-core credit hours claimed.

(v) *Certificates of instruction*. Qualifying sponsors shall furnish to each instructor, discussion leader, or speaker, a certificate listing the following information:

- (A) The name of the instructor, discussion leader, or speaker.
- (B) The name of the sponsoring organization.
- (C) The title and location of the program.
- (D) The dates of the program.
- (E) The total credit hours claimed and the total core and non-core credit hours claimed for the program.

(g) *Alternative means for completion of credit hours*—(1) *In general*. In addition to credit hours completed under paragraph (f) of this section, an enrolled actuary may be awarded continuing education credit under the provisions of this paragraph (g).

(2) *Serving as an instructor, discussion leader or speaker*. (i) Four credit hours (that is, 200 minutes) of continuing education credit will be awarded for each 50 minutes completed as an instructor, discussion leader, or speaker at a qualifying program which meets the continuing education requirements of paragraph (f) of this section.

(ii) The credit for instruction and preparation may not exceed 50 percent of the continuing education requirement for an enrollment cycle.

(iii) Presentation of the same material as an instructor, discussion leader, or speaker more than one time in any 36-month period will not qualify for continuing education credit. A program

will not be considered to consist of the same material if a substantial portion of the content has been revised to reflect changes in the law or practices relative to the performance of pension actuarial service.

(iv) Credit as an instructor, discussion leader, or speaker will not be awarded to panelists, moderators, or others who are not required to prepare substantive subject matter for their portion of the program. However, such individuals may be awarded credit for attendance, provided the other provisions of this section are met.

(v) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(3) *Credit for publications.* (i) Continuing education credit will be awarded for the creation of peer-reviewed materials for publication or distribution with respect to matters directly related to the continuing professional education requirements of this section. Credit will be awarded to the author, co-author, or a person listed as a major contributor.

(ii) One hour of credit will be allowed for each hour of preparation time of the material. It will be the responsibility of the person claiming the credit to maintain records to verify preparation time.

(iii) Publication or distribution may utilize any available technology for the dissemination of written, visual or auditory materials.

(iv) The materials must be available on reasonable terms for acquisition and use by all enrolled actuaries.

(v) The credit for the creation of materials may not exceed 25 percent of the continuing education requirement of any enrollment cycle.

(vi) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(vii) Publication of the same material more than one time will not qualify for continuing education credit. A publication will not be considered to consist of the same material if a substantial portion has been revised to reflect changes in the law or practices relative to the performance of pension actuarial service.

(4) *Service on Joint Board advisory committee(s).* Continuing education credit may be awarded by the Joint Board for service on (any of) its advisory committee(s), to the extent that the Joint Board considers warranted by the service rendered.

(5) *Preparation of Joint Board examinations.* Continuing education credit may be awarded by the Joint Board for participation in drafting questions for use on Joint Board

examinations or in pretesting its examinations, to the extent the Joint Board determines suitable. Such credit may not exceed 50 percent of the continuing professional education requirement for the applicable enrollment cycle.

(6) *Examinations sponsored by professional organizations or societies.* Individuals may earn continuing professional education credit for achieving a passing grade on proctored examinations sponsored by a professional organization or society recognized by the Joint Board. Such credit is limited to the number of hours scheduled for each examination and may be applied only as non-core credit provided the content of the examination is core or non-core. No credit may be earned for hours attributable to any content that is neither core nor non-core.

(7) *Joint Board pension examination.* Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by—

(i) Achieving a passing score on the Joint Board pension examination, as described in § 901.12(d)(1)(i), administered under this part during the applicable enrollment cycle; and

(ii) Completing a minimum of 12 hours of qualifying continuing education by attending a formal program during the same applicable enrollment cycle. This option of satisfying the continuing professional education requirements is not available to those who receive initial enrollment during the enrollment cycle.

\* \* \* \* \*

(i) [Reserved]

(j) *Recordkeeping requirements—(1) Qualified sponsors.* A qualified sponsor must maintain records to verify satisfaction of the requirements of this section. Such records must be retained for a period of six years following the end of the sponsor enrollment cycle in which the program is held. In the case of programs of more than one session, records must be maintained to verify completion of the program and attendance by each participant at each session of the program. Copies of any certificates of completion and certificates of instruction issued to the participants in each program must be retained.

(2) *Enrolled actuaries—(i) Qualifying program credits as student.* To receive continuing education credit for completion of hours of continuing education credits under paragraph (f) of this section, an enrolled actuary must retain all certificates of completion evidencing completion of such hours for

the three-year period following the end of the applicable enrollment cycle.

(ii) *Qualifying program credits as teacher or instructor.* To receive continuing education credit for completion of hours earned under paragraph (g)(2) of this section, an enrolled actuary must retain all certificates of instruction evidencing completion of such hours for the three year period following the end of the applicable enrollment cycle.

(iii) *Credit for publications.* To receive continuing education credit for a publication under paragraph (g)(3) of this section, the following information must be maintained by the enrolled actuary for the three year period following the end of the applicable enrollment cycle:

(A) The name of the publisher.

(B) The title and author of the publication.

(C) A copy of the publication.

(D) The date of the publication.

(E) The total credit hours claimed and the total core and non-core credit hours claimed.

(iv) *Other credits.* To receive continuing education credit for hours earned under paragraphs (g)(4) through (g)(7) of this section, an enrolled actuary must retain sufficient documentation to establish completion of such hours for the three-year period following the end of the applicable enrollment cycle.

(k) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Executive Director only under extraordinary circumstances, and upon submission of sufficient evidence that every effort was made throughout the renewal cycle to complete such continuing education requirements through any one or more of the various qualifying programs offered by one or more of the qualified sponsors.

(2) A request for waiver must be accompanied by appropriate documentation. The individual will be required to furnish any additional documentation or explanation deemed necessary by the Executive Director.

(3) The individual will be notified by the Executive Director of the disposition of the request for waiver. If the waiver is not approved, and the individual does not otherwise satisfy the continuing education requirements within the allotted time, the individual will be placed on a roster of inactive enrolled individuals.

(4) A request for waiver must be filed no later than the last day of the renewal application period. Those who are granted waivers are required to file timely applications for future renewal of enrollment.

(l) \* \* \* (1) Compliance by an individual with the requirements of this part shall be determined by the Executive Director. \* \* \*

(2) The Executive Director may require any individual, by first class mail sent to his/her mailing address of record with the Joint Board, to provide copies of any records required to be maintained under this section. \* \* \*

(3) \* \* \* A request for review and the reasons in support of the request must be filed with the Joint Board within 30 days of the date of the notice of failure to comply.

(4) *Inactive status.* (i) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of failure to comply with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled actuaries for a period up to three enrollment cycles from the date renewal would have been effective.

(ii) An individual in inactive status will be ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code. During such time in inactive status or at any other time an individual is ineligible to perform pension actuarial services as an enrolled actuary, the individual shall not in any manner, directly or indirectly, indicate he or she is so enrolled, or use the term "enrolled actuary," the designation "E.A.," or other form of reference to eligibility to perform pension actuarial services as an enrolled actuary.

(iii) An individual placed in inactive status may return to active status by filing an application for renewal of enrollment (with the appropriate fee) and providing evidence of the completion of all required continuing professional education hours for the enrollment cycle and satisfaction of any applicable requirements for qualifying experience under paragraph (l)(7) of this section. If an application for return to active status is approved, the individual will be eligible to perform services as an enrolled actuary and to practice before the Internal Revenue Service effective with the date the notice of approval is mailed to that individual by the Joint Board.

(5) *Time for return to active enrollment.* (i) An individual placed in inactive status must file an application for return to active enrollment, and satisfy the requirements for return to active enrollment as set forth in this section, within three enrollment cycles of being placed in inactive status. The name of such individual otherwise will be removed from the inactive

enrollment roster and his/her enrollment will terminate.

(ii) For purposes of paragraph (l)(5)(i) of this section, an individual placed in inactive status prior to the effective date of these regulations will be deemed to have been placed in inactive status on the effective date of these regulations.

(6) An individual placed in inactive status may satisfy the requirements for return to active enrollment at any time during his/her period of inactive enrollment. If only completion of the continuing education requirement is necessary, the application for return to active enrollment may be filed immediately upon such completion. If qualifying experience is also required, the application for return to active enrollment may not be filed until the completion of both the continuing education and qualifying experience requirements set forth in this subsection. Continuing education credit under this subsection may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(7) *Continuing education requirements for return to active enrollment from inactive status.* (i) During the first inactive enrollment cycle: 36 hours of the qualifying continuing education requirement from the prior enrollment cycle as set forth in paragraph (e)(2) of this section, without regard to paragraph (e)(2)(ii) or (e)(2)(iii) of this section, must be completed. Any hours of continuing education credit from the immediately prior enrollment cycle may be applied in satisfying this requirement.

(ii) During the second inactive enrollment cycle: Four-thirds of the qualifying continuing education requirements as set forth in paragraph (e)(2) of this section (that is, 48 hours), without regard to paragraph (e)(2)(ii) or (e)(2)(iii) of this section, plus eighteen months of the qualifying experience requirements set forth in § 901.12(b)(1), must be completed since the start of the first inactive enrollment cycle. Any hours of continuing education credit from the first inactive enrollment cycle may be applied in satisfying this requirement.

(iii) During the third inactive enrollment cycle: Five-thirds of the qualifying continuing education requirements as set forth in paragraph (e)(2) of this section, (that is, 60 hours), without regard to paragraph (e)(2)(ii) or (e)(2)(iii) of this section plus eighteen months of the qualifying experience requirements set forth in § 901.12(b)(1), must be completed since the start of the second inactive enrollment cycle. Any

hours of continuing education credit from the second inactive enrollment cycle may be applied in satisfying this requirement. No hours from the first inactive enrollment cycle may be applied in satisfying this requirement.

\* \* \* \* \*

(9) An individual who has certified in good faith that he/she has satisfied the continuing education requirements of this section will not be considered to be in non-compliance with such requirements on the basis of a program he/she has attended later being found inadequate or not in compliance with the requirements for continuing education. \* \* \*

\* \* \* \* \*

(n) *Verification.* The Executive Director or his/her designee may request and review the continuing education records of an enrolled actuary, including programs attended, in a manner deemed appropriate to determine compliance with the requirements and standards for the renewal of enrollment as provided in this section. The Executive Director may also request and review the records of any qualified sponsor in a manner deemed appropriate to determine compliance with the requirements of paragraphs (f)(3) and (j)(1) of this section.

(o) *Examples.* The following examples illustrate the application of the rules of paragraph (l)(7) of this section:

*Example 1.* (i) Individual E, who was initially enrolled before January 1, 2008, completes 5 hours of core continuing education credit and 10 hours of non-core continuing education credit between January 1, 2011, and December 31, 2013.

Accordingly, effective April 1, 2014, E is placed on a roster of inactive enrolled actuaries and is ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code.

(ii) E completes 7 hours of core continuing education credit and 14 hours of non-core continuing education credit between January 1, 2014, and May 24, 2016. Because E has completed 12 hours of core continuing education and 24 hours of non-core continuing education during the last active enrollment period and the initial period when on inactive status, E has satisfied the requirements for reenrollment during the first inactive cycle. Accordingly, E may file an application for return to active enrollment on May 24, 2016. If this application is approved, E will be eligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code, effective with the date of such approval.

(iii) Because E used the 21 hours of continuing education credit earned after January 1, 2014, for return from inactive status, E may not apply any of these 21 hours of core and non-core continuing education credits towards the requirements for renewed

enrollment effective April 1, 2017.

Accordingly, E must complete an additional 36 hours of continuing education (12 core and 24 non-core) prior to December 31, 2016, to be eligible for renewed enrollment effective April 1, 2017.

*Example 2.* (i) The facts are the same as in *Example 1* except E completes 2 hours of core continuing education credit and 8 hours of non-core continuing education credit between January 1, 2014, and December 31, 2016. Thus, because E did not fulfill the requirements for return to active status during his first inactive cycle, E must satisfy the requirements of paragraph (l)(7)(ii) of this section in order to return to active status.

(ii) Accordingly, in order to be eligible to file an application for return to active status on or before December 31, 2019, E must complete an additional 38 hours of continuing education credit (of which at least 14 hours must consist of core subject matter) between January 1, 2017, and December 31, 2019, and have 18 months of responsible pension actuarial experience during the period subsequent to December 31, 2013.

(iii) Note that the 5 hours of core continuing education credit and the 10 hours of non-core continuing education credit that E completes between January 1, 2011, and December 31, 2013, are not counted toward E's return to active status and are also not taken into account toward the additional hours of continuing education credit that E must complete between January 1, 2017, and December 31, 2019, in order to apply for renewal of enrollment effective April 1, 2020.

*Example 3.* (i) The facts are the same as in *Example 1* except E completes 2 hours of core continuing education credit and 8 hours of non-core continuing education credit between January 1, 2014, and December 31, 2016, and 12 hours of core continuing education credit and 24 hours of non-core continuing education credit between January 1, 2017, and December 31, 2019. Thus, because E did not fulfill the requirements for return to active status during his first or second inactive cycles, E must satisfy the requirements of paragraph (l)(7)(iii) of this section in order to return to active status.

(ii) Accordingly, in order to be eligible to file an application for return to active status on or before December 31, 2022, E must complete an additional 24 hours of continuing education credit (of which, at least 8 hours must consist of core subject matter) between January 1, 2020, and December 31, 2022, and have at least 18 months of responsible pension actuarial experience during the period subsequent to December 31, 2016.

(iii) Note that the total of 15 hours of continuing education credit that E completes between January 1, 2011, and December 31, 2013, as well as the 10 hours of continuing education credit between January 1, 2014, and December 31, 2016, are not counted toward E's return to active status and are not taken into account toward the additional hours of continuing education credit that E must complete between January 1, 2020, and December 31, 2022, in order to be eligible to file an application for renewal of enrollment active status effective April 1, 2023.

*Example 4.* (i) Individual F, who was initially enrolled July 1, 2012, completes 1

hour of core continuing education credit and 2 hours of non-core continuing education credit between January 1, 2012, and December 31, 2013. Accordingly, effective April 1, 2014, F is placed on a roster of inactive enrolled actuaries and is ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code.

(ii) F completes 5 hours of core continuing education credit and 4 hours of non-core continuing education credit between January 1, 2014, and October 6, 2014. Because F has not completed the required 6 hours of core and 6 hours of non-core continuing education during F's initial enrollment cycle, F is not eligible to file an application for a return to active enrollment on October 6, 2014, notwithstanding the fact that had F completed such hours between January 1, 2012, and December 31, 2013, F would have satisfied the requirements for renewed enrollment effective April 1, 2014.

(iii) Accordingly, F must complete an additional 24 hours of continuing education (12 hours of core and 12 hours of non-core) during his/her first inactive enrollment cycle before applying for renewal of enrollment.

*Example 5.* The facts are the same as in *Example 4* except that F completes 17 hours of core continuing education credit and 16 hours of non-core continuing education credit between January 1, 2014, and February 12, 2015. Accordingly, because as of February 12, 2015, F satisfied the continuing education requirements as set forth in paragraph (e)(2) of this section without regard to paragraph (e)(2)(ii) thereof, F may file an application for return to active enrollment status on February 12, 2015.

(p) With the exception of paragraphs (e)(1) and (f)(3)(iii), this section applies to the enrollment cycle beginning January 1, 2008, and all subsequent enrollment cycles.

#### **§ 901.12 [Removed]**

**Par. 6.** Section 901.12 is removed.

#### **§ 901.13 [Redesignated as § 901.12]**

**Par. 7.** Section 901.13 is redesignated as § 901.12.

**Par. 8.** Newly redesignated § 910.12 is amended by revising the section heading and paragraphs (a), (b), (d), and (e).

The revisions read as follows:

#### **§ 901.12 Eligibility for enrollment.**

(a) *In general.* An individual applying to be an enrolled actuary must fulfill the experience requirement of paragraph (b) of this section, the basic actuarial knowledge requirement of paragraph (c) of this section, and the pension actuarial knowledge requirement of paragraph (d) of this section.

(b) *Qualifying experience.* Within the 10-year period immediately preceding the date of application, the applicant shall have completed either—

(1) A minimum of 36 months of certified responsible pension actuarial experience; or

(2) A minimum of 60 months of certified responsible actuarial experience, including at least 18 months of certified responsible pension actuarial experience.

\* \* \* \* \*

(d) *Pension actuarial knowledge.* (1) The applicant shall demonstrate pension actuarial knowledge by one of the following:

(i) *Joint Board pension examination.* Successful completion, within the 10-year period immediately preceding the date of the application, to a score satisfactory to the Joint Board, of an examination, prescribed by the Joint Board, in actuarial mathematics and methodology relating to pension plans, including the provisions of ERISA relating to the minimum funding requirements and allocation of assets on plan termination.

(ii) *Organization pension examinations.* Successful completion, within the 10-year period immediately preceding the date of the application, to a score satisfactory to the Joint Board, of one or more proctored examinations which are given by an actuarial organization and which the Joint Board has determined cover substantially the same subject areas, have at least a comparable level of difficulty, and require at least the same competence as the Joint Board pension examination referred to in paragraph (d)(1)(i) of this section.

(2) For purposes of this section, applicants who have successfully completed an examination pursuant to either paragraph (d)(1)(i) or (d)(1)(ii) of this section prior to the effective date of these regulations, will be deemed to have completed such examination on the effective date.

(e) *Form; fee.* An applicant who wishes to take an examination administered by the Joint Board under paragraph (c)(1) or (d)(1) of this section shall file an application on a form prescribed by the Joint Board. Such application shall be accompanied by payment in the amount set forth on the application form. The amount represents a fee charged to each applicant for examination and is designed to cover the costs for the administration of the examination. The fee shall be retained whether or not the applicant successfully completes the examination or is enrolled.

\* \* \* \* \*

**Par. 9.** Section 901.20 is amended as follows:

A. Revising paragraphs (b), (d), (e), and (f).

B. Redesignating paragraphs (g) and (h) as paragraph (k) and (l), respectively, and adding new paragraphs (g) and (h).

C. Reserving paragraph (i).

D. Adding new paragraphs (j) and (m).

The revisions and additions read as follows:

**§ 901.20 Standards of performance of actuarial services.**

\* \* \* \* \*

(b) *Professional duty.* (1) An enrolled actuary shall perform actuarial services only in a manner that is fully in accordance with all of the duties and requirements for such persons under applicable law and consistent with relevant standards of professional responsibility and ethics for actuarial practice.

(2) An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes, or has reasonable grounds to believe, may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

(3) An enrolled actuary, upon learning of another enrolled actuary's material violation of this section, shall report the violation to the Executive Director.

\* \* \* \* \*

(d) *Conflicts of interest.* In any situation in which an enrolled actuary has knowledge of an actual or potential conflict of interest with respect to the performance of actuarial services, he/she shall not perform such actuarial services unless—

(1) He/she has conducted a good faith evaluation of the circumstances giving rise to the conflict and reasonably concludes that his or her ability to act fairly is unimpaired;

(2) The representation by the enrolled actuary is not prohibited by law; and

(3) Full disclosure of the conflict has been made, in writing, to all present and known prospective principals whose interest would be affected by the conflict, including the plan trustees, any named fiduciary of the plan, the plan administrator thereof and, if the plan is subject to a collective bargaining agreement, the collective bargaining representative, and all such principals have expressly agreed, in writing, to such enrolled actuary performing the actuarial services.

(e) *Assumptions, calculations and recommendations.* (1) The enrolled actuary shall exercise due care, skill, prudence and diligence when performing actuarial services under ERISA and the Internal Revenue Code. In particular, in the course of preparing a report or certificate stating actuarial costs or liabilities, the enrolled actuary shall ensure that—

(i) The actuarial assumptions are reasonable individually and in combination, and the actuarial cost

method and the actuarial method of valuation of assets are appropriate;

(ii) The calculations are accurately carried out and properly documented; and

(iii) The report, any recommendations, and any supplemental advice or explanation relative to the report reflect the results of the calculations.

(2) An enrolled actuary shall include in any report or certificate stating actuarial costs or liabilities, a statement or reference describing or clearly identifying the data, any material inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(f) *Due diligence.* (1) An enrolled actuary must exercise due diligence—

(i) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity;

(ii) In determining the correctness of oral or written representations made by the enrolled actuary to the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity; and

(iii) In determining the correctness of oral or written representations made by the enrolled actuary to clients.

(2) An enrolled actuary advising a client to take a position on any document to be filed with the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity (or preparing or signing such a return or document) generally may rely in good faith without verification upon information furnished by the client. The enrolled actuary may not, however, ignore the implications of information furnished to, or actually known by, the enrolled actuary, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(g) *Solicitations regarding actuarial services.* An enrolled actuary may not in any way use or participate in the use of any form of public communication or private solicitation related to the performance of actuarial services containing a false, fraudulent, or coercive statement or claim, or a misleading or deceptive statement or claim. An enrolled actuary may not make, directly or indirectly, an

uninvited written or oral solicitation of employment related to actuarial services if the solicitation violates Federal or State law, nor may such person employ, accept employment in partnership form, corporate form, or any other form, or share fees with, any individual or entity who so solicits. Any lawful solicitation related to the performance of actuarial services made by or on behalf of an enrolled actuary must clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(h) *Prompt disposition of pending matters.* An enrolled actuary may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity.

(i) [Reserved]

(j) *Return of client's records.* (1) In general, an enrolled actuary must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her legal obligations. The enrolled actuary may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the enrolled actuary of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by an enrolled actuary in the case of a dispute over fees for services rendered, the enrolled actuary need only return those records that must be attached to the client's legally required forms. The enrolled actuary, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the enrolled actuary under state law that are necessary for the client to comply with his or her legal obligations.

(2) For purposes of this section, *records of the client* include all documents or written or electronic materials provided to the enrolled actuary, or obtained by the enrolled actuary in the course of the enrolled actuary's representation of the client, that preexisted the retention of the enrolled actuary by the client. The term "records of the client" also includes materials that were prepared by the client or a third party (not including an employee or agent of the enrolled actuary) at any time and provided to the enrolled actuary with respect to the subject matter of the representation. The term "records of the client" also includes any return, claim for refund, schedule, affidavit, appraisal or any

other document prepared by the enrolled actuary, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current legal obligations. The term "records of the client" does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary or the enrolled actuary's firm, employees or agents if the enrolled actuary is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

\* \* \* \* \*

(m) The rules of this section apply to all actuarial services and related acts performed on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 10.** Section 901.31 is amended by revising paragraphs (a) and (c) introductory text to read as follows:

**§ 901.31 Grounds for suspension or termination of enrollment.**

(a) *Failure to satisfy requirements for enrollment.* The enrollment of an actuary may be terminated if it is found that the actuary did not satisfy the eligibility requirements set forth in § 901.11 or § 901.12.

\* \* \* \* \*

(c) *Disreputable conduct.* The enrollment of an actuary may be suspended or terminated if it is found that the actuary has, at any time after he/she applied for enrollment, engaged in any conduct set forth in § 901.12(f) or other conduct evidencing fraud, dishonesty, or breach of trust. Such other conduct includes, but is not limited to, the following:

\* \* \* \* \*

**Par. 11.** Section 901.32 is amended by revising the last sentence to read as follows:

**§ 901.32 Receipt of information concerning enrolled actuaries.**

\* \* \* If any other person has information of any such violation, he/she may make a report thereof to the Executive Director.

**Par. 12.** Section 901.47 is amended by revising the last sentence to read as follows:

**§ 901.47 Transcript.**

\* \* \* Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to parties upon the payment of a reasonable fee (31 U.S.C. 9701).

**Par. 13.** Section 901.72 is added to read as follows:

**§ 901.72 Additional rules.**

The Joint Board may, in notice or other guidance of general applicability, provide additional rules regarding the enrollment of actuaries.

**Zenaida Samaniego,**  
*Chairman, Joint Board for the Enrollment of Actuaries.*

[FR Doc. E9-22454 Filed 9-18-09; 8:45 am]

BILLING CODE 4810-25-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1074]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before December 21, 2009.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1074, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW.,

Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the

applicable standards of Executive Order 12988.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

#### PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

#### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Boone County, Arkansas, and Incorporated Areas				
Crooked Creek .....	Approximately 200 feet downstream of Highway 65 ...	None	+1,047	Unincorporated Areas of Boone County.
Dry Jordan Creek .....	Approximately 1,300 feet upstream of Cloverhill Road	None	+1,070	Unincorporated Areas of Boone County.
	Approximately 0.63 miles upstream of Goblin Drive ....	None	+1,167	
Dry Jordan Tributary .....	Approximately 0.64 miles upstream of Goblin Drive ....	None	+1,167	Unincorporated Areas of Boone County.
	Approximately 560 feet upstream of Highway 65 .....	None	+1,208	
	Approximately 720 feet upstream of Highway 65 .....	None	+1,208	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (*see below*) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Unincorporated Areas of Boone County

Maps are available for inspection at 100 North Main Street, Harrison, AR 72601.

<b>Johnson County, Arkansas, and Incorporated Areas</b>				
Little Willett Branch .....	Just upstream of State Highway 103 .....	None	+409	Unincorporated Areas of Johnson County.
	Approximately 200 feet upstream of State Highway 103.	None	+409	
Sprada Creek .....	Approximately 1,050 feet downstream of Private Road 3477.	None	+391	Unincorporated Areas of Johnson County.
	Just upstream of County Highway 3520 .....	None	+411	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (*see below*) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Unincorporated Areas of Johnson County

Maps are available for inspection at P.O. Box 278, 705 Cline Road, Clarksville, AR 72830.

<b>Del Norte County, California, and Incorporated Areas</b>				
Lake Earl .....	Entire shoreline .....	None	+13	Unincorporated Areas of Del Norte County.
Lake Tolowa .....	Entire shoreline .....	None	+13	Unincorporated Areas of Del Norte County.
Overflow Southwest of Smith River.	Approximately 2,000 feet east of the intersection of Prigmore Street and Fisher Drive.	None	+13	Unincorporated Areas of Del Norte County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Pacific Ocean .....	Approximately 500 feet west of the intersection of Highway 101 and Reynolds Court.	None	+40	Unincorporated Areas of Del Norte County.
	From approximately 1,420 feet north of Pyramid Point to approximately 7,870 feet south of the mouth of Lake Tolowa along the shoreline of the Pacific Ocean.	None	+14–20	
	Approximately 7,000 feet north of the mouth of Lake Tolowa just inland of the shoreline of the Pacific Ocean.	None	#1	
	Approximately 2,300 feet north of the mouth of Lake Tolowa just inland of the shoreline of the Pacific Ocean.	None	#2	
Rowdy Creek .....	Confluence with Smith River .....	None	+25	Unincorporated Areas of Del Norte County.
Sheetflow Southwest of Smith River.	Approximately 1,450 feet upstream of Highway 101 ...	None	+64	Unincorporated Areas of Del Norte County.
	From just downstream of Highway 101 to approximately 500 feet west of Lower Lake Road between Tryon Creek and the Smith River.	None	#2	
Smith River .....	Mouth of the Smith River .....	None	+15	Unincorporated Areas of Del Norte County.
	Approximately 2,100 feet upstream of Highway 101 ...	None	+47	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Unincorporated Areas of Del Norte County

Maps are available for inspection at City Hall, Public Works Department, 377 J Street, Crescent City, CA 95531.

##### Edmonson County, Kentucky, and Incorporated Areas

Alexander Creek (Backwater effects from Green River).	From confluence with Green River to approximately 240 feet upstream of confluence with Alexander Creek Tributary 3.	None	+446	Unincorporated Areas of Edmonson County.
Bear Creek (Backwater effects from Green River).	From confluence with Green River to approximately 3.8 miles upstream of confluence with Green River.	None	+438	Unincorporated Areas of Edmonson County.
Beaverdam Creek South (Backwater effects from Green River).	From confluence with Green River to approximately 3.4 miles upstream of confluence with Green River.	None	+449	Unincorporated Areas of Edmonson County, City of Brownsville.
Beaverdam Creek Tributary 6 (Backwater effects from Green River).	From confluence with Beaverdam Creek South to approximately 1,400 feet upstream of confluence with Beaverdam Creek South.	None	+449	Unincorporated Areas of Edmonson County, City of Brownsville.
Brier Creek (Backwater effects from Nolin Lake).	From confluence with Nolin Lake to approximately 0.6 mile upstream of confluence with Nolin Lake.	None	+560	Unincorporated Areas of Edmonson County.
Bylew Creek (Backwater effects from Green River).	From confluence with Nolin River to approximately 1.2 miles upstream of confluence with Nolin River.	None	+455	Unincorporated Areas of Edmonson County.
Dog Creek (Backwater effects from Nolin Lake).	From county boundary to approximately 0.6 mile upstream of confluence with Dog Creek Tributary 1.	None	+560	Unincorporated Areas of Edmonson County.
Green River .....	At confluence with Bear Creek .....	None	+438	Unincorporated Areas of Edmonson County, City of Brownsville.
	At approximately 3.4 miles upstream of confluence with Ugly Creek.	None	+480	
Green River Tributary 4 (Backwater effects from Green River).	From confluence with Green River to approximately 0.6 mile upstream of confluence with Green River.	None	+445	Unincorporated Areas of Edmonson County.
Honey Creek (Backwater effects from Green River).	From confluence with Green River to approximately 1.6 miles upstream of confluence with Green River.	None	+443	Unincorporated Areas of Edmonson County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Indian Creek (Backwater effects from Green River).	From confluence with Green River to approximately 0.9 mile upstream of confluence with Green River.	None	+452	Unincorporated Areas of Edmonson County, City of Brownsville.
Laurel Branch (Backwater effects from Green River).	From confluence with Beaverdam Creek South to approximately 0.5 mile upstream of confluence with Beaverdam Creek South.	None	+449	City of Brownsville.
Little Beaverdam Creek (Backwater effects from Green River).	From confluence with Green River to approximately 1 mile upstream of confluence with Sally Branch.	None	+442	Unincorporated Areas of Edmonson County.
Nolin Lake .....	Entire shoreline of Nolin Lake .....	None	+560	Unincorporated Areas of Edmonson County.
Nolin River (Backwater effects from Green River).	From confluence with Green River to approximately 0.8 mile upstream of confluence with Bylew Creek.	None	+455	Unincorporated Areas of Edmonson County.
Sally Branch (Backwater effects from Green River).	From confluence with Little Beaverdam Creek to approximately 0.6 mile upstream of confluence with Little Beaverdam Creek.	None	+442	Unincorporated Areas of Edmonson County.
Ugly Creek (Backwater effects from Green River).	From confluence with Green River to approximately 1.1 miles upstream of confluence with Green River.	None	+477	Unincorporated Areas of Edmonson County.
Wolf Creek (Backwater effects from Nolin Lake).	From confluence with Dog Creek to approximately 1 mile upstream of confluence with Dog Creek.	None	+560	Unincorporated Areas of Edmonson County.

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Brownsville

Maps are available for inspection at 121 Washington Street, Brownsville, KY 42210.

##### Unincorporated Areas of Edmonson County

Maps are available for inspection at 108 North Main Street, Brownsville, KY 42210.

#### Lincoln County, Nevada, and Incorporated Areas

Clover Creek .....	Approximately 280 feet upstream of confluence with Meadow Valley Wash (Near Caliente).	+4,404	+4,409	Unincorporated Areas of Lincoln County, City of Caliente.
	Approximately 2.4 miles upstream of confluence with Meadow Valley Wash (Near Caliente).	None	+4,473	
Meadow Valley Wash (Near Caliente).	Approximately 0.73 mile downstream of Union Pacific Railroad.	None	#2	Unincorporated Areas of Lincoln County, City of Caliente.
	Approximately 1,540 feet downstream of Union Pacific Railroad.	None	#3	
Meadow Valley Wash (Near Ursine).	Approximately 0.73 mile downstream of Union Pacific Railroad.	+4,329	+4,329	Unincorporated Areas of Lincoln County.
	Approximately 674 feet upstream of U.S. Highway 93	+4,437	+4,438	
	Approximately 1.0 mile downstream of North Eagle Valley Road.	None	+5,543	
	Approximately 1,150 feet upstream of North Eagle Valley Road.	None	+5,607	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

**ADDRESSES****City of Caliente**

Maps are available for inspection at 100 Depot Avenue, Caliente, NV 89008.

**Unincorporated Areas of Lincoln County**

Maps are available for inspection at the Planning and Zoning Department, 181 Main Street, Suite 107, Pioche, NV 89043.

**Clay County, Tennessee, and Incorporated Areas**

Cumberland River .....	Approximately 3.5 miles downstream of Highway 52 ..	None	+508	Unincorporated Areas of Clay County, City of Celina.
	Approximately 4.8 miles upstream of Highway 52 .....	None	+518	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES****City of Celina**

Maps are available for inspection at City Hall, 143 Cordell Hull Drive, Celina, TN 38551.

**Unincorporated Areas of Clay County**

Maps are available for inspection at the Clay County Public Library, 116 Guffey Street, Celina, TN 38551.

**Atascosa County, Texas, and Incorporated Areas**

Rutledge Hollow Creek .....	Just upstream of Roys Drive .....	None	+440	Unincorporated Areas of Atascosa County.
	Approximately 500 feet upstream of Roys Drive .....	None	+442	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

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\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES****Unincorporated Areas of Atascosa County**

Maps are available for inspection at Circle Drive 41, Jourdan, TX 78026.

**Washington County, Vermont (All Jurisdictions)**

Great Brook No. 1 .....	At the confluence with Winooski River .....	+503	+501	Town of Middlesex.
	Approximately 140 feet downstream of U.S. Route 2	+503	+501	
Gunnors Brook .....	At the downstream side of Brook Street .....	+598	+596	City of Barre.
	Approximately 80 feet upstream of Brook Street .....	None	+616	
Mad River .....	At the confluence with Winooski River .....	+452	+454	Town of Moretown.
	Approximately 950 feet upstream of confluence with Winooski River.	+452	+454	
Mirror Lake .....	Entire shoreline .....	None	+1,047	Town of Calais.
North Montpelier Pond .....	Entire shoreline .....	None	+708	Town of Calais, Town of East Montpelier.
Stevens Branch .....	At the confluence with Winooski River .....	+547	+544	Town of Barre, City of Barre, City of Montpelier, Town of Berlin.
	At county boundary (approximately 2.0 miles upstream of Snowbridge Road).	+741	+740	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Sunny Brook of Winooksi River.	At the confluence with Winooski River .....	+513	+510	Town of Middlesex.
Thatcher Brook .....	At downstream side of New England Central Railroad	+513	+510	Town of Waterbury.
	Approximately 225 feet upstream of Stowe Street .....	+503	+502	
	Approximately 1,100 feet upstream of Stowe Street ...	+504	+503	
Union Brook .....	At the confluence with Dog River .....	+727	+728	Village of Northfield.
	Approximately 60 feet upstream of Water Street .....	+727	+728	Town of Middlesex, City of Montpelier, Town of Berlin, Town of Duxbury, Town of East Montpelier, Town of Moretown, Town of Waterbury, Village of Waterbury.
Winooski River .....	At Chittenden County Boundary (approximately 13,080 feet downstream of Bolton Falls Dam).	+341	+342	
	At downstream side of Green Mountain Power No. 4 Dam.	+597	+595	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Barre

Maps are available for inspection at City Hall, 6 North Main Street, Barre, VT 05641.

##### City of Montpelier

Maps are available for inspection at the Planning, Zoning, and Community Development Department, City Hall, 39 Main Street, Montpelier, VT 05602.

##### Town of Barre

Maps are available for inspection at the Town Clerk's Office, 149 Websterville Road, Websterville, VT 05678.

##### Town of Berlin

Maps are available for inspection at the Town Zoning Office, 108 Shed Road, Berlin, VT 05602.

##### Town of Calais

Maps are available for inspection at the Town Clerk's Office, 3120 Pekin Brook Road, East Calais, VT 05650.

##### Town of Duxbury

Maps are available for inspection at the Town Office, 5421 Vermont Route 100, Duxbury, VT 05676.

##### Town of East Montpelier

Maps are available for inspection at the Town Hall, 40 Kelton Road, East Montpelier, VT 05651.

##### Town of Middlesex

Maps are available for inspection at the Town Clerk's Office, 5 Church Street, Middlesex, VT 05602.

##### Town of Moretown

Maps are available for inspection at the Town Clerk's Office, 994 Vermont Route 100B, Moretown, VT 05660.

##### Town of Waterbury

Maps are available for inspection at the Waterbury Municipal Offices, 51 South Main Street, Waterbury, VT 05676.

##### Village of Northfield

Maps are available for inspection at the Zoning Office, 51 South Main Street, Northfield, VT 05663.

##### Village of Waterbury

Maps are available for inspection at the Waterbury Municipal Offices, 51 South Main Street, Waterbury, VT 05676.

#### Upshur County, West Virginia, and Incorporated Areas

Brushy Fork (Backwater flooding from Buckhannon River).	Approximately at the confluence with Fink Run .....	None	+1,415	Unincorporated Areas of Upshur County.
	Approximately 700 feet upstream of County Route 7/1 (Left Branch of Brushy Fork).	None	+1,415	
Fink Run (Backwater flooding from Buckhannon River).	Just upstream of Old Weston Road .....	None	+1,415	Unincorporated Areas of Upshur County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unnamed Tributary No. 1 to Fink Run (Backwater flooding from Buckhannon River).	Approximately 2,100 feet upstream of intersection of Old Weston Road and County Route 5/7 (Mudlick Run).	None	+1,415	Unincorporated Areas of Upshur County.
	Approximately at the area bounded by US Route 33, Wabash Avenue, and County Route 33/1.	None	+1,415	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Unincorporated Areas of Upshur County

Maps are available for inspection at 38 West Main Street, Buckhannon, WV 26201.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Deborah S. Ingram,**

*Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E9-22581 Filed 9-18-09; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1135

[STB Ex Parte No. 682]

#### Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board (Board) proposes that the Association of American Railroads (AAR) annually update each Class I railroad's weighted average State tax rate for use in the Revenue Shortfall Allocation Method (RSAM), which is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases*, STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007)

(*Simplified Standards*). Pursuant to 49 U.S.C. 11145, the Board proposes that AAR calculate the weighted average State tax rate using the number of miles operated by each Class I carrier in each state and the corporate income tax rates for each State. The Board proposes that AAR submit this information on or before the due date for the Class I railroads to submit their Annual Report R-1, Schedule 250.

**DATES:** Comments must be filed by October 21, 2009. Replies are due November 10, 2009.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 682, 395 E Street, SW., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Strafford at (202) 245-0356. Assistance for the hearing impaired is available through the Federal

Information Relay Service (FIRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The Board recently completed a revision to its methodology for calculating RSAM, one of the three benchmarks used in the rate standard applied to the smallest rate disputes under *Simplified Standards*. See *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method*, STB Ex Parte No. 646 (Sub-No. 2) (STB served May 11, 2009) (*RSAM Taxes*). Specifically, that revision addressed the methodology used to calculate railroad-specific tax rates to be reflected in RSAM. The calculation of the railroad-specific weighted average state tax rates requires, as one component, the state tax rates applicable to each Class I railroad, which can vary by state and railroad depending on a number of factors. The Board noted in *RSAM Taxes* that, because of this variance, the Board would need updated tax information on an annual basis. Therefore, the Board is now instituting this proceeding to propose that AAR annually update each Class I railroad's weighted average state tax information.

Under the Board's proposal the AAR would calculate the weighted average state tax rate for each Class I railroad using the state corporate income tax rates and the number of miles operated by each carrier in each state for the previous year. For the state corporate income tax rates, AAR would use the state corporate tax information

published on the website of the Tax Foundation,<sup>1</sup> adjusted as necessary.<sup>2</sup> For the route-mile portion of the average state tax equation, AAR would use information from each railroad's respective R-1 Schedule 702 (Miles of Road at Close of Year—By States and Territories (Single Track)), column (g) of Schedule 702, which lists the total miles operated, including both "line owned" and "line operated under trackage rights." AAR would also be required to submit workpapers detailing its calculations.

The Board proposes that AAR submit the state tax information annually on or before the due date for the Class I railroads to file their Annual Report R-1, Schedule 250, which is currently April 30 of each year. The Board proposes that within 10 days of receiving the AAR's state tax information, it would issue a notice that the AAR has filed the state tax information and publish that notice in the **Federal Register**. The Board would allow a period of 30 days from the date of the notice for interested parties to comment. If no comments are received within 30 days, then the tax rates submitted will automatically be adopted on the 31st day. This tax information would then be used for calculating the RSAM figures for that year. If comments opposing AAR's calculations are timely filed, AAR would have 20 days to respond. The Board would then review the submission and comments and serve a decision, within 60 days from the close of the record, that either accepts,

rejects, or modifies the AAR's railroad-specific tax information.

With regard to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, this proposed action directly impacts the representative association for the Class I railroads but does not directly impact small entities within the meaning of the Regulatory Flexibility Act. Accordingly, pursuant to 5 U.S.C. 605(b), the Board certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. A copy of this decision is being provided to the Chief Counsel for Advocacy, Small Business Administration.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### List of Subjects in 49 CFR Part 1135

Administrative practice and procedure, Railroads, and Reporting and recordkeeping requirements.

**Authority:** 5 U.S.C. 553 and 49 U.S.C. 721 and 10708.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

**Jeffery Herzig,**  
*Clearance Clerk.*

#### Appendix

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1135 of title 49, chapter X, of the Code of Federal Regulations as follows:

#### PART 1135—REPORTING REQUIREMENTS FOR RATE PROCEEDINGS

1. The authority citation for part 1135 is revised to read as follows:

**Authority:** 5 U.S.C. 553, and 49 U.S.C. 721, 10701, 10704, 10708, and 11145.

2. Add § 1135.2 to read as follows:

#### § 1135.2 Revenue Shortfall Allocation Method: Annual state tax information.

(a) To enable the Board to calculate the revenue shortfall allocation method (RSAM), which is one of the three benchmarks that are used to determine the reasonableness of a challenged rate under one standard of the Board's *Simplified Standards for Rail Rate Cases*, STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007), the Association of American Railroads (AAR) shall file with the Board on or before the due date for the Class I railroads to submit their Annual Report R-1, Schedule 250, the weighted average state tax rates applicable to each Class I railroad for the previous year. The AAR shall submit workpapers detailing its calculations.

(b) The Board will serve and publish in the **Federal Register** within 10 days of the AAR's filing.

(c) Any interested party may file comments on AAR's filing within 30 days of the notice described in paragraph (b) of this section. If no comments are received within 30 days, the Board will automatically adopt AAR's weighted average state tax rates on the 31st day. If comments opposing AAR's calculations are received, AAR's response is due within 20 days of the comments. The Board will review the submission and comments and serve a decision within 60 days from the date of the close of the record that either accepts, rejects, or modifies the AAR's railroad-specific tax information.

[FR Doc. E9–22604 Filed 9–18–09; 8:45 am]

**BILLING CODE 4915–01–P**

<sup>1</sup> See <http://www.taxfoundation.org>.

<sup>2</sup> As the Board explained in *RSAM Taxes*, AAR had to adjust some of the State tax information reported on the Tax Foundation Web site due to the need for updated information, the Tax Foundation's rounding of tax rates for certain States, or carrier- or State-specific adjustments such as franchise taxes, tax surcharges, and utility franchise taxes.

# Notices

Federal Register

Vol. 74, No. 181

Monday, September 21, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

#### Notice of Intent To Seek Approval To Conduct an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection, the 2009 On-Farm Renewable Energy Production Survey.

**DATES:** Comments on this notice must be received by November 20, 2009 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535—NEW, 2009 On-Farm Renewable Energy Production Survey by any of the following methods:

- *E-mail:* [ombofficer@nass.usda.gov](mailto:ombofficer@nass.usda.gov). Include docket number and title above in the subject line of the message.

- *Fax:* (202) 720-6396

- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, Mail Stop 2024, South Building, 1400 Independence Avenue, SW., Washington, DC 20250-2024.

- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue, SW., Washington, DC 20250-2024.

#### FOR FURTHER INFORMATION CONTACT:

Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-4333.

**SUPPLEMENTARY INFORMATION:** *Title:* 2009 On-Farm Renewable Energy Production Survey.

*OMB Control Number:* 0535—NEW.

*Type of Request:* Intent to Seek Approval to Conduct a new Information Collection as mandated by the Food, Conservation, and Energy Act of 2008.

*Abstract:* The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for the 2009 On-Farm Renewable Energy Production Survey to be conducted as a follow-on survey from the 2007 Census of Agriculture and is authorized by the Food, Conservation, and Energy Act of 2008 (Title IX—Energy).

The 2009 On-Farm Renewable Energy Production Survey will use as a sampling universe every respondent on the 2007 Census of Agriculture who reported energy generation on the farm using wind or solar technology, methane digester, etc. This energy survey will provide a comprehensive inventory of farm generated energy practices with detailed data relating to category or type of energy produced (wind, solar, and manure/methane digester), how much energy was generated, if any energy was sold onto a power grid, and the average payment received per kilowatt hour or total amount of utility savings from reduced demand. Data collection will be in the second half of 2010 for the reference period of 2009, with a final report published in Feb. of 2011. Data will be published at both the U.S. and State level where possible.

The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. This request is in response to a mandate from the Food, Conservation, and Energy Act of 2008.

*Authority:* These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-

aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995). NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 20 minutes per completed response.

*Respondents:* Farmers, ranchers, and farm managers self identified as producers of energy, through the 2007 Census of Agriculture.

*Estimated Number of Respondents:* 16,500.

*Estimated Total Annual Burden on Respondents:* 5,500 hours.

Copies of this information collection and related instructions can be obtained without charge from the NASS OMB Clearance Officer, at (202) 720-2248.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, September 14, 2009.

**Joseph T. Reilly,**

*Associate Administrator.*

[FR Doc. E9-22593 Filed 9-18-09; 8:45 am]

**BILLING CODE 3410-20-P**

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****Interim Guidelines and Funds Availability for Projects Involving the Local and Regional Procurement of Food Aid**

**AGENCY:** Foreign Agricultural Service and Commodity Credit Corporation, USDA.

**ACTION:** Notice of Availability and request for comments.

**SUMMARY:** This notice announces that the Foreign Agricultural Service (FAS), on behalf of the Commodity Credit Corporation (CCC), is issuing a set of guidelines for the administration and implementation of Local and Regional Food Aid Procurement Pilot Project (PPP) authorized under the Food, Conservation, and Energy Act of 2008. FAS will provide CCC funds in the form of grants to qualified organizations during FY 2009 through FY 2011 for the implementation of field-based projects under the PPP to meet the food needs of targeted vulnerable groups. The "Interim Guidelines for the Local and Regional Food Aid Procurement Project" can be found at <http://www.fas.usda.gov/food-aid.asp>. The Interim Guidelines are intended to guide the application and implementation of field projects in developing countries that involve the local and regional procurement of food aid. Field projects will be funded primarily to expedite the provision of food aid to vulnerable populations affected by food crises and disasters. A secondary purpose will be to provide development assistance that will enhance the food consumption security of such populations. The Interim Guidelines inform prospective participants about the qualification criteria and application process, as well as procedures and requirements for project implementation, monitoring and reporting. This notice formally requests public review of and comments on the Interim Guidelines.

**DATES:** The Interim Guidelines will be effective immediately upon publication of this notice in the **Federal Register**. Eligible organizations may submit applications for qualification and funding for field-based projects following the date of publication. Members of the public must submit comments on the Interim Guidelines on or before October 21, 2009. FAS will consider comments received by this date and then issue final guidelines for the Local and Regional Procurement Pilot Project.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *E-Mail to:* [LRP@fas.usda.gov](mailto:LRP@fas.usda.gov) or [Jamie.Fisher@fas.usda.gov](mailto:Jamie.Fisher@fas.usda.gov);
- *Fax:* (202) 690-0251;
- *U.S. Postal Delivery:* Jamie Fisher, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, 1400 Independence Avenue, SW., Washington, DC 20250-1034; and
- *Hand Delivery or Courier:* Jamie Fisher, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1250 Maryland Avenue, SW., Suite 400, Washington, DC 20024.

For comments on the Interim Guidelines, please include the volume, date, and page number of this **Federal Register** notice. Comments may be inspected in the Office of the Director, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1250 Maryland Avenue, SW., Washington, DC 20250 between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Jamie Fisher, Program Analyst, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, 1400 Independence Avenue, SW., Washington, DC 20250-1034; phone (202) 720-5620; by fax: (202) 690-0251; or by e-mail: [Jamie.Fisher@fas.usda.gov](mailto:Jamie.Fisher@fas.usda.gov).

FAS intends to hold information and feedback sessions pertaining to the Interim Guidelines shortly after their issuance. Interested organizations should immediately consult <http://www.fas.usda.gov/food-aid.asp> after the issuance of the Interim Guidelines for specific information about the date, time, and location of these information sessions. Other announcements regarding the PPP will be posted at this address over the life of the Project.

The USDA prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, marital, or familial status. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-5881 (voice) or (202) 720-7808 (TDD).

**SUPPLEMENTARY INFORMATION:**

The Interim Guidelines for the PPP are intended to accomplish the following objectives:

1. Set forth the criteria for eligible organizations to apply to become qualified to submit applications for funding of a field-based project.

2. Inform qualified organizations about the requirements for the submission of applications for funding field-based emergency response projects, development assistance projects, or both.

3. Set forth the implementation guidelines and performance and reporting requirements.

4. Establish minimum quality standards for eligible commodities.

5. Allow for sufficient flexibility for participants to expedite the provision of food assistance to populations affected by food crises and disasters and to facilitate the recovery of market systems that directly affect food consumption.

6. Provide guidance to ensure that local and regional purchases:

- Expedite the provision of food to vulnerable populations;
- Do not increase the price of food for low-income consumers;
- Do not disrupt global agricultural commodity markets;
- Do not disrupt normal patterns of commercial trade; and
- Do not serve as a disincentive that substantially undermines the agricultural production levels of farmers in the recipient country or in a neighboring country in the region.

7. Identify the types of data and information that implementing organizations must collect for the independent evaluation of the PPP.

Dated: August 24, 2009.

**Michael V. Michener,**

*Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.*

[FR Doc. E9-22615 Filed 9-16-09; 4:15 pm]

**BILLING CODE 3410-10-P**

**DEPARTMENT OF AGRICULTURE****Forest Service****Notice of Resource Advisory Committee Meeting**

**AGENCY:** Lassen Resource Advisory Committee, Susanville, CA, USDA Forest Service.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110-343) the Lassen County Resource Advisory Committee will meet October 8, 2009 in Susanville, California for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on October 8, 2009

will begin at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. This meeting will be dedicated to review the process for 2009 funding cycle, discuss project review with monthly monitoring reports and the future monitoring process, and report out on summer field trips to projects.

**FOR FURTHER INFORMATION CONTACT:** Contact Tern Frolli, Designated Federal Official, at (530) 257-4188; or Public Affairs Officer, Heidi Perry, at (530) 252-6604.

**Lorene T. Guffey,**

*Acting Forest Supervisor.*

[FR Doc. E9-22574 Filed 9-18-09; 8:45 am]

**BILLING CODE M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

September 16, 2009.

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

**DATES:** *Effective Date:* **September 21, 2009.**

**SUMMARY:** The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain cotton/polyester three thread circular knit fleece fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

**FOR FURTHER INFORMATION ON-LINE:** <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf>, under "Approved Requests," reference number: 128.2009.08.07.Fabric.ST&Rfor Intradeco

### SUPPLEMENTARY INFORMATION:

**Authority:** The CAFTA-DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA-

DR Implementation Act"), Public Law 109-53; the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006); Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200 (September 15, 2008).

### BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA-DR Agreement; see also Section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA-DR (Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200) ("procedures").

On August 7, 2009, the Chairman of CITA received a request for a commercial availability determination ("Request") from Sandler, Travis & Rosenberg, P.A. on behalf of Intradeco Apparel, Inc. ("Intradeco"), for certain cotton/polyester three thread circular knit fleece fabrics. On August 11, 2009, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated *website* for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply

("Response") must be submitted by August 21, 2009, and any Rebuttal Comments to a Response ("Rebuttal") must be submitted by August 27, 2009. On August 24, 2009, CITA announced that, in accordance with Section 6(a) and 7(a) of its procedures, it found sufficient good cause to extend the deadlines for Responses to August 24, 2009, and deadlines for Rebuttals to August 28, 2009. On August 24, 2009, Hylos y Telas s.a. ("HyT") submitted a Response to the Request. On August 28, 2009, Intradeco submitted a Rebuttal to the Response.

In its Request, Intradeco stated that it had conducted due diligence to source the fabric from CAFTA-DR suppliers, including HyT. Intradeco reported that it had engaged in a dialogue with HyT over the course of several weeks, during which time it requested information about HyT's capacity and asked that HyT confirm its interest in supplying the subject fabric. The requestor asserted that HyT did not provide detailed information about its production capability and capacity to produce the subject fabric. As a result, Intradeco claimed that HyT did not demonstrate that it is able supply the fabric in question in commercial quantities in a timely manner.

In the Response submitted by HyT, the supplier stated that it had been in contact with Intradeco in the course of its due diligence efforts, and had offered to supply the subject fabric. In the Confidential version of its Response, HyT provided information regarding its production capabilities, including quantities of past production of other fabrics, and an inventory of its manufacturing equipment. HyT also stated that it had developed a new fabric in response to Intradeco's inquiries, and had sent a sample to Intradeco on August 8, 2009. With its sample, HyT also sent a lab report reflecting the specifications of the fabric, known as a "specification sheet." HyT asserted that it had provided Intradeco with the same specification sheet it included as an attachment in the Confidential version of its Response. In its Response, HyT stated that, while there were some variations in the specifications of the fabric it had developed and the required specifications of the subject fabric, "such differences (were) not an obstacle to fulfill the requirements of the final product."

Section 203(o)(4)(C) of the CAFTA-DR Implementation Act provides that after receiving a Request, CITA will make a determination as to whether the subject product is available in commercial quantities in a timely manner in the CAFTA-DR countries. In

the instant case, the information on the record indicates that the fabric offered by HyT does not meet the specifications outlined in Intradeco's Request, differing in fiber content, appearance, shrinkage tolerance, and yarn construction. Further, HyT has not established why its proposed fabric, with its different specifications, is substitutable for the subject product. CITA therefore finds that HyT has not demonstrated its ability to supply the specified fabric or one substitutable. Therefore, in accordance with section 203(o) of the CAFTA-DR Implementation Act and CITA's procedures, as no interested entity has substantiated its ability to supply the subject product in commercial quantities in a timely manner, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated *website* for CAFTA-DR Commercial Availability proceedings.

**Specifications: Certain Cotton/Polyester Three Thread Circular Knit Fleece Fabric (Fabric #2)**

**HTSUS:** 6001.21

**Fiber Content:** 67–73% cotton/27–33% polyester

**Average Yarn Number:**

Face Yarn: 100% combed cotton, 50/1 to 57/1 metric (30/1 to 34/1 English).

Tie Yarn: 100% filament polyester; 176 to 184/48 filament metric filament polyester (49 to 51/48 filament denier)

Fleece Yarn: 57–63% carded cotton/37–43% polyester; 15/1 to 20/1 metric (9/1 to 12/1 English).

**Machine Gauge:** 21

**Weight:** 271–310 grams per square meter (8.0 to 9.15 ounces per square yard)

**Width:** 152–183 centimeters (60 to 72 inches)

**Finish:** Piece dyed and/or printed

In addition, the technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. The height of the pile is a requirement of the finished fabric. During processing, including rolling of the fabric, the actual height of the fabric, including the napping, may be less.

**Performance Criteria:** Vertical and horizontal shrinkage must be less than 5%. Torque may not exceed 4% All fabrics must have a Class 1 flammability rating.

For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

**Kimberly Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E9–22665 Filed 9–18–09; 8:45 am]

**BILLING CODE 3510-DS**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

September 16, 2009.

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement

**DATES:** *Effective Date:* **September 21, 2009.**

**SUMMARY:** The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain cotton/nylon/spandex raschel knit open work crepe fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

**FOR FURTHER INFORMATION ONLINE:** <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf> under "Approved Requests," Reference number: 130.2009.08.21.Fabric.ST&Rfor Hansae

#### SUPPLEMENTARY INFORMATION:

**Authority:** The CAFTA-DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA-DR Implementation Act"), Pub. Law 109–53; the Statement of Administrative Action accompanying the CAFTA-DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006); Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200 (September 15, 2008) ("CITA's procedures").

#### BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in

commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA-DR Agreement; see also Section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA-DR. See CITA's procedures.

On August 21, 2009, the Chairman of CITA received a Request for a Commercial Availability Determination ("Request") from Sandler, Travis & Rosenberg, P.A., on behalf of Hansae Co. Ltd., for certain cotton/nylon/spandex raschel knit open work crepe fabric, as specified below. On August 24, 2009, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply ("Response") must be submitted by September 4, 2009, and any Rebuttal Comments to a Response must be submitted by September 11, 2009, in accordance with Sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of an objection to the Request and an ability to supply the subject product.

In accordance with Section 203(o)(4)(C) of the CAFTA-DR Implementation Act, and Section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

Therefore, the subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

**Specifications: Certain Cotton/Nylon/Spandex  
Raschel Knit Open Work Crepe Fabric**

**HTSUS:** 6005.22.00, 6005.24.00

**Fabric type:** Raschel knit, open work crepe fabric

**Fiber content:** 59–63% cotton, 33–36% nylon, wrapped with 3–5% spandex

**Yarn size:**

**Cotton:**

English: 57/2 to 63/2

Metric: 96/2 to 107/2

**Nylon:**

English: 38 to 42 denier/24 filament or 66 to 74 denier / 2

Metric: 38 to 62 denier/24 filament or 121.50 to 136.50 / 2

**Spandex (wrapped around Nylon):**

Spandex—English: 199.5 to 220.5 denier; Metric: 40.85 to 45.15;

Nylon—English: 66–74 denier/2; Metric: 121.50 to 136.5/2)

**Machine gauge:** 18

**Number of bars:** 34

**Weight:** 110 to 140 grams per sq. meter

**Width:** 127 to 152 centimeters

**Finishing Process:** Piece dyed or printed

**Kimberly Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E9–22672 Filed 9–18–09; 8:45 am]

**BILLING CODE 3510–DS**

**COMMITTEE FOR THE  
IMPLEMENTATION OF TEXTILE  
AGREEMENTS**

**Determination under the Textile and  
Apparel Commercial Availability  
Provision of the Dominican Republic-  
Central America-United States Free  
Trade Agreement (CAFTA–DR  
Agreement)**

September 16, 2009.

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

**DATES:** *Effective Date: September 21, 2009.*

**SUMMARY:** The Committee for the Implementation of Textile Agreements (“CITA”) has determined that certain cotton/polyester three thread circular knit fleece fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

**FOR FURTHER INFORMATION ON-  
LINE:** <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf>, under “Approved Requests,” reference number:

127.2009.08.07.Fabric.ST&Rfor  
Intradeco.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (“CAFTA–DR Implementation Act”), Pub. Law 109–53; the Statement of Administrative Action (SAA), accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006); Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200 (September 15, 2008).

**BACKGROUND**

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA–DR Agreement; see also Section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200) (“procedures”).

On August 7, 2009, the Chairman of CITA received a request for a commercial availability determination (“Request”) from Sandler, Travis & Rosenberg, P.A. on behalf of Intradeco Apparel, Inc. (“Intradeco”), for certain cotton/polyester three thread circular

knit fleece fabrics. On August 11, 2009, in accordance with CITA’s procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (“Response”) must be submitted by August 21, 2009, and any Rebuttal Comments to a Response (“Rebuttal”) must be submitted by August 27, 2009. On August 24, 2009, CITA announced that, in accordance with Section 6(a) and 7(a) of its procedures, it found sufficient good cause to extend the deadlines for Responses to August 24, 2009, and deadlines for Rebuttals to August 28, 2009. On August 24, 2009, Hylos y Telas s.a. (“HyT”) submitted a Response to the Request. On August 28, 2009, Interdeco submitted a Rebuttal to the Response.

In its Request, Intradeco stated that it had conducted due diligence to source the fabric from CAFTA–DR suppliers, including HyT. Intradeco reported that it had engaged in a dialogue with HyT over the course of several weeks, during which time it requested information about HyT’s capacity and asked that HyT confirm its interest in supplying the subject fabric. The requestor asserted that HyT did not provide detailed information about its production capability and capacity to produce the subject fabric. As a result, Intradeco claimed that HyT did not demonstrate that it is able supply the fabric in question in commercial quantities in a timely manner.

In the Response submitted by HyT, the supplier stated that it had been in contact with Intradeco in the course of its due diligence efforts, and had offered to supply the subject fabric. In the Confidential version of its Response, HyT provided information regarding its production capabilities, including quantities of past production of other fabrics, and an inventory of its manufacturing equipment. HyT also stated that it had developed a new fabric in response to Intradeco’s inquiries, and had sent a sample to Intradeco on August 8, 2009. With the sample, HyT also sent a lab report reflecting the specifications of the fabric, known as a “specification sheet.” HyT asserted that it had provided Intradeco with the same specification sheet it included as an attachment in the Confidential version of its Response. In its Response, HyT stated that, while there were some variations in the specifications of the fabric it had developed and the required specifications of the subject fabric, “such differences (were) not an obstacle

to fulfill the requirements of the final product.”

Section 203(o)(4)(C) of the CAFTA–DR Implementation Act provides that after receiving a Request, CITA will make a determination as to whether the subject product is available in commercial quantities in a timely manner in the CAFTA–DR countries. In the instant case, the information on the record indicates that the fabric offered by HyT does not meet the specifications outlined in Intradeco’s Request, differing in fiber content, appearance, shrinkage tolerance, and yarn construction. Further, HyT has not established why its proposed fabric, with its different specifications, is substitutable for the subject product. CITA therefore finds that HyT has not demonstrated its ability to supply the specified fabric or one substitutable. Therefore, in accordance with section 203(o) of the CAFTA–DR Implementation Act and CITA’s procedures, as no interested entity has substantiated its ability to supply the subject product in commercial quantities in a timely manner, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Website for CAFTA–DR Commercial Availability proceedings.

**Specifications: Certain Cotton/Polyester Three Thread Circular Knit Fleece Fabric (Fabric #1)**

**HTSUS:** 6001.21

**Fiber Content:** 77–83% cotton/17–23% polyester  
**Yarn Size:**

**1.Face Yarn:** 100% combed cotton ring spun, 49/1 to 54/1 metric (29/1 to 32/1 English) in each of the following configurations:

- a. 100% bleached or dyed cotton
- b. 95% undyed cotton/5% dyed cotton
- c. 90% undyed cotton/10% dyed cotton
- d. 80% undyed cotton/20% dyed cotton
- e. 70% undyed cotton/30% dyed cotton
- f. 60% undyed cotton/40% dyed cotton
- g. 50% undyed cotton/50% dyed cotton
- h. 40% undyed cotton/60% dyed cotton
- i. 30% undyed cotton/70% dyed cotton
- j. 25% undyed cotton/75% dyed cotton
- k. 20% undyed cotton/80% dyed cotton

The percentages above may vary by up to 2 percentage points.

**2. Tie Yarn:** 176 to 184/48 filament metric filament polyester (49 to 51/48 filament denier)

**3. Fleece Yarn:** 67–73% carded cotton, 26/1 to 30/1 metric ring spun/27–33% 3600–4500 metric polyester staple (15.5/1 to 18/1 ring spun/2.0 to 2.5 denier polyester staple)

**Machine Gauge:** 21

**Weight:** 232–271 grams per square meter (6.85 to 8.0 ounces per square yard)

**Width:** Not less than 152 centimeters cuttable (60 inches)

**Finish:** Napped on technical back; bleached and/or dyed; and of yarns of different colors

**Performance Criteria:** Not more than 5% vertical and horizontal shrinkage; not more than 4% vertical torque

**Kimberly Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E9–22669 Filed 9–18–09; 8:45 am]

**BILLING CODE 3510–DS**

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Limitations of Duty and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric**

September 15, 2009.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Publishing the New 12-Month Cap on Duty and Quota Free Benefits.

**DATES:** *Effective Date:* October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 3103 of the Trade Act of 2002, Pub. L. 107–210; Title VII of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), P.L. 109–432; H.R. 1830, 110th Cong. (2007) (H.R. 1830); Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283, November 5, 2002).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the ATPA, as amended, provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA

beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

The TRHCA of 2006 extended the expiration of the ATPA to June 30, 2007. See section 7002(a) of the TRHCA 2006. H.R. 1830 further extended the expiration of the ATPA to February 29, 2008. H.R. 5264 further extended the expiration of the ATPA to December 31, 2008. H.R. 7222, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2009. See Pub. L. No. 110–436.

For the period beginning on October 1, 2009 and extending through December 31, 2009, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2009. In Presidential Proclamation 7616 (published in the **Federal Register** on November 5, 2002, 67 FR 67283), the President directed CITA to publish in the **Federal Register** the aggregate quantity of imports allowed during each period.

For the period beginning on October 1, 2009 and extending through December 31, 2009, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,163,423,598 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**Kimberly Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E9–22675 Filed 9–18–09; 8:45 am]

**BILLING CODE 3510–DS**

**DEPARTMENT OF COMMERCE****Census Bureau****Proposed Information Collection;  
Comment Request; Survey of State  
Research and Development****AGENCY:** U.S. Census Bureau.**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before November 20, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pamela D. Medwid, U.S. Census Bureau, Governments Division, Washington DC 20233-6800 (or via the Internet at [pamela.d.dutterer@census.gov](mailto:pamela.d.dutterer@census.gov)).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The U.S. Census Bureau plans to continue to conduct the Survey of State Research and Development Expenditures to measure research and development supported and performed by State governments in the United States. This survey is a joint effort between the Census Bureau and the National Science Foundation (NSF).

The NSF Act of 1950 includes a statutory charge to "provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government." Under the aegis of this legislative mandate, NSF and its predecessors have sponsored surveys of research and development since 1953, including the Survey of Industrial Research and Development and the Survey of State Research and Development Expenditures.

Items on the survey form include research and development expenditures according to the source of funding, by performer of the work (internal and external to State agencies), and by character (*i.e.*, basic, applied, or developmental). Final results produced by NSF contain State and National estimates useful to a variety of data users interested in research and development performance including: the National Science Board; the Office of Management and Budget; the Office of Science and Technology Policy and other science policy makers; institutional researchers; and private organizations.

**II. Method of Collection**

All data are collected electronically via an Internet Web form. The approximately 500 State government agencies surveyed will be assisted during the collection period by central State coordinators.

**III. Data**

*OMB Control Number:* 0607-0933.

*Form Number:* SRD-1.

*Type of Review:* Regular submission.

*Affected Public:* State Government Agencies.

*Estimated Number of Respondents:* 52 State coordinators and 500 State agencies.

*Estimated Time per Response:* 4 hours for every State coordinator and 1.5 hours for every State agency.

*Estimated Total Annual Burden Hours:* 958.

*Estimated Total Annual Cost:* \$19,000.

*Respondent's Obligation:* Voluntary.

**Legal Authority:** Title 13 U.S.C. Sections 8(b), 161, and 182. Title 15 United States Code, Section 1525.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: September 15, 2009.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9-22509 Filed 9-18-09; 8:45 am]

**BILLING CODE 3510-07-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric  
Administration****RIN 0648-XR66****Endangered and Threatened Species;  
Take of Anadromous Fish**

**AGENCY:** National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** Notice is hereby given of the availability of a Routine Road Maintenance Program (RMP) that Clackamas County, Oregon, has submitted pursuant to the Endangered Species Act (ESA). NOAA Fisheries promulgated a protective rule for 14 threatened salmon and steelhead Evolutionarily Significant Units (ESUs). The RMP would affect four ESUs of threatened salmonids identified in the **SUPPLEMENTARY INFORMATION.** The 4(d) rule provides for limits on ESA take prohibitions for the various activities set out in the rule. The RMP addresses the limit for routine road maintenance activities of any state, city, county or port. This Notice serves to notify the public of the availability of the Clackamas County RMP for review and comment before a final approval or disapproval is made by NOAA Fisheries.

**DATES:** Written comments on the draft RMP must be received at the appropriate address or fax number (*see ADDRESSES*) no later than 5 p.m. Pacific Standard Time on October 21, 2009.

**ADDRESSES:** Written comments should be sent to Dr. Anne Mullan, Habitat Conservation Division, National Marine Fisheries Service, 1201 NE Lloyd Blvd, Suite 1100, Portland, Oregon 97232. Comments may also be faxed to (503) 231-6893. Copies of the entire RMP are available online with this title, Best Management Practices for Routine Road Maintenance Application, at: <http://www.clackamas.us/transportation/library.htm>. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Mullan at phone number (503) 231-6267, or e-mail [anne.mullan@noaa.gov](mailto:anne.mullan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority**

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) identifies specific categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with routine road maintenance provided that a state or local program has been approved by NOAA Fisheries to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

**Species Covered in this Notice**

This notice is relevant to the following five threatened salmon ESUs: Chinook salmon (*Oncorhynchus tshawytscha*); threatened Upper Willamette River (UWR), and Lower Columbia River (LCR). Steelhead (*Oncorhynchus mykiss*); threatened Upper Willamette River (UWR), threatened Lower Columbia River (LCR). Coho salmon (*Oncorhynchus kisutch*); threatened Lower Columbia River (LCR).

Clackamas County, Department of Transportation and Development, submitted the RMP for routine road maintenance activities that might affect certain salmonid ESUs listed as threatened within the boundaries of Clackamas County. The RMP was designed so that routine road maintenance activities would be protective of salmonids and their habitat.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) under limit 10(i), take prohibitions to threatened species of salmonids do not apply to routine road maintenance activities of a state, county, city or port that complies with a program that is substantially similar to that contained in the Oregon Department of Transportation (ODOT) Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices (Guide, July 1999), and that is determined to meet or exceed the protections provided in the ODOT Guide. NOAA Fisheries may approve a routine road maintenance

program of any state, city, county or port that contains management practices that are equivalent to or better than those in the ODOT Guide. Prior to final approval of a routine road maintenance program, NOAA Fisheries must publish notification in the **Federal Register** announcing the program's availability for public review and comment.

The Clackamas County RMP submittal includes a cover letter addressed to the Regional Administrator of NOAA Fisheries, and a statement of commitment from Clackamas County to implement the RMP. In Parts 1 through 3, the RMP provides the responsible entity and legal authority for the program and provides a description of the program, including a description of Clackamas County's Riparian Management Areas and their Restricted Area Zones. In Part 2, the RMP provides a description of the geographic area to which the program applies, including an analysis of the environmental baseline of the watersheds of the lower Columbia River and the lower Willamette River within the County boundaries. Part 3 also includes tables that describe various habitat parameters such as culverts that block fish passage, riparian condition, and water quality condition. In Part 4, the RMP describes the listed species distribution and status, referring to distribution maps for steelhead and chinook found in Appendix B. A list of relevant reports is provided in Part 5. In Part 6, the RMP summarizes the training, monitoring, and reporting elements of the RMP and the RMP makes an affirmative conclusion that the program is identical to ODOT's program, referring to Table 5 comparing the two programs.

The RMP defines activities that are routine road maintenance. These consist of maintenance activities that are conducted on currently serviceable structures, facilities, and equipment, involve no expansion of or change in use, and do not result in significant negative hydrological impact. Clackamas County's asserts that their practices are as effective as ODOT's practices at protecting fish and their habitat because they are adopting the ODOT Best Management Practices. They differ only in the width of the Restricted Activity Zones delineated for each river or stream in the area covered by this RMP. These will be 150 feet on each side of the road or stream for Clackamas County's Road Maintenance Program, while ODOT uses a 250 foot width zone to review actions for additional protection. However, as the county road network is much denser, the narrower zones provide comparable protection to the ODOT program. Approval or

disapproval of the RMP will depend on NOAA Fisheries' findings after public review and comment.

Dated: September 15, 2009.

**Therese Conant,**

*Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9-22655 Filed 9-18-09; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XR67**

**Endangered and Threatened Species; Take of Anadromous Fish**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Applications for two scientific research permit renewals and one permit modification.

**SUMMARY:** Notice is hereby given that NMFS has received three scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: [https://apps.nmfs.noaa.gov/preview/preview\\_open\\_for\\_comment.cfm](https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm).

**DATES:** Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on October 21, 2009.

**ADDRESSES:** Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274. Comments may also be sent via fax to 503-230-5441 or by e-mail to [resapps.nwr@NOAA.gov](mailto:resapps.nwr@NOAA.gov).

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, Portland, OR (ph.: 503-231-2005, Fax: 503-230-5441, e-mail: [Garth.Griffin@noaa.gov](mailto:Garth.Griffin@noaa.gov)). Permit application instructions are available from the address above, or online at [apps.nmfs.noaa.gov](https://apps.nmfs.noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Species Covered in This Notice**

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer (spr/sum), threatened SR fall.

Chum salmon (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): threatened LCR, threatened UWR, threatened middle Columbia River (MCR), threatened SR, threatened UCR.

Coho salmon (*O. kisutch*): threatened LCR, threatened Oregon Coast (OC).

Sockeye salmon (*O. nerka*): endangered SR.

#### Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

#### Applications Received

##### Permit 1523–2R

The National Council of Air and Stream Improvements (NCASI) is seeking to renew its permit to annually take listed salmon while conducting research in the McKenzie and Willamette rivers in Oregon. The NCASI is requesting another 5-year permit to take juvenile UWR Chinook salmon while studying water quality and biological conditions in rivers receiving paper- and pulp mill discharges. The research will provide information on existing conditions in the watersheds and on changes in those conditions over time, and ultimately on the aquatic communities' responses to environmental stressors. The information will be used in a larger effort to monitor watershed health, water quality, and salmon recovery in the Upper Willamette watershed. The NCASI proposes to capture (using boat electrofishers), handle, and release

listed salmon. The NCASI does not intend to capture adult fish but some may be in the areas being fished and will be avoided as much as possible. While most of the fish would not be harmed, some juveniles may unintentionally be killed during the course of the research.

##### Permit 1525–3R

The Northwest Fisheries Science Center (NWFSC) is seeking to renew its permit to annually take listed salmonids in the Lower Willamette River, Oregon, and in the Columbia River from its mouth up to Bonneville Dam. The NWFSC is requesting another 5-year permit to take juvenile SR spring/summer Chinook salmon, SR fall Chinook salmon, SR steelhead, UCR Chinook salmon, UCR steelhead, MCR steelhead, LCR Chinook salmon, LCR steelhead, UWR Chinook salmon, UWR steelhead, and CR chum salmon. The purposes of the study are to (1) determine contaminant concentrations in fish, (2) understand contaminant bioaccumulation in juvenile salmon and determine site-specific factors leading to any contamination, (3) analyze the fish for the presence of physiological biomarkers, and (4) determine if the fish exhibit any indicators of exposure to environmental estrogens. The NWFSC would collect samples with seines or high-speed rope trawls and is asking for authorization to handle juvenile fish and to intentionally kill some of them for pathogen assays, biochemical composition, histopathological attributes, and stomach content analyses.

##### Permit 1318–7M

Permit 1318 currently authorizes the Oregon Department of Fish and Wildlife (ODFW) to take juvenile UCR Chinook salmon, UCR steelhead, SR steelhead, SR fall-run Chinook salmon, SR spring/summer-run Chinook salmon, SR sockeye salmon, MCR steelhead, UWR Chinook salmon, UWR steelhead, LCR Chinook salmon, LCR coho salmon, LCR steelhead, CR chum salmon, and OC coho salmon in streams in the Willamette and Columbia basins, and on the Oregon coast. The ODFW is seeking to modify the permit by adding an eighth project. The application contains the following projects: (1) warm water fish management surveys; (2) investigations of natural production of spring Chinook salmon in the Mohawk basin; (3) genetic characterization of rainbow trout in the upper Willamette subbasin; (4) fish abundance, population status, genetics and disease surveys in the upper Willamette subbasin; (5) native trout

surveys for abundance, size composition, and migration patterns in the mainstem McKenzie River; (6) resident redband population estimates in the Deschutes River; (7) resident redband population estimates in the Crooked River; and (8) fish population sampling in the North Willamette Watershed District. The research would benefit the fish by providing information on population structure, abundance, genetics, disease occurrence, and species interactions. That information would be used to direct management actions to benefit listed species. Juvenile salmonids would be collected (using boat electrofishing). Some fish would be anesthetized, sampled for length and weight, allowed to recover from the anesthesia, and released. Most salmonids would only be shocked and allowed to swim away, or be netted and released immediately. The ODFW does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **FEDERAL REGISTER**.

Dated: September 15, 2009.

**Therese Conant,**

*Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–22652 Filed 9–18–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–580–862]

#### Ni–Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are not being provided to producers and exporters of Ni–resist piston inserts from the Republic of Korea (Korea).

**DATES:** *Effective Date:* September 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1009.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation covers 15 programs and a single producer/exporter, Incheon Metal Co., Ltd. (Incheon Metal). The petitioner in this investigation is Korff Holdings LLC dba Quaker City Castings (Petitioner).

**Period of Investigation**

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the most recently completed fiscal year for Incheon Metal and the government of Korea (GOK). See 19 CFR 351.204(b) (2).

**Case History**

On July 6, 2009, the Department published in the **Federal Register** the preliminary determination in the countervailing duty investigation of Ni-resist piston inserts from Korea. See *Ni-Resist Piston Inserts from the Republic of Korea: Preliminary Negative Countervailing Duty Determination*, 74 FR 31919 (July 6, 2009) (*Preliminary Determination*).

In accordance with section 782(i)(1) of the Tariff Act of 1930, as amended (the Act), from July 30 through August 4, 2009, we conducted verification of the questionnaire responses submitted by the GOK and Incheon Metal (collectively, respondents). We issued the verification reports on August 14, 2009, and August 21, 2009, respectively.<sup>1</sup>

On August 27, 2009, we received a case brief from Petitioner. On August

31, 2009, we received a case brief from the GOK. On September 3, 2009 and September 8, 2009, we received rebuttal briefs from Incheon Metal and the GOK. No hearing was requested.

**Scope of the Investigation**

The scope of this investigation includes all Ni-resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni-resist piston inserts may also be called other names including, but not limited to, "Ring Carriers," or "Alfin Inserts." Ni-resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni-resist piston inserts are composed of the material known as Ni-resist, of the chemical composition: 13.5% - 17.5% Ni (nickel), 5.5% - 8.0% Cu (copper), 0.8% - 2.5% Cr (chromium), 0.5% - 1.5% Mn (manganese), 1.0% - 3.0% Si (silicon), 2.4% - 3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A-436 grade 1.

The scope of this investigation does not include piston rings nor did any other product manufacture using the Ni-resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the Harmonized Tariff Schedule of the United States (HTSUS), but have been imported under HTSUS 7326.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of this investigation.

**Injury Test**

Because Korea is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (the

ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury, to a U.S. industry. On March 25, 2009, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea of the subject merchandise. See *Ni-Resist Piston Inserts from Argentina and Korea*, Investigation Nos. 701-TA-460-461 (Preliminary), 74 FR 12898 (March 25, 2009).

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Suspension of Liquidation**

In accordance with section 705(c) (1) (B) (i) (I) of the Tariff Act of 1930 (as amended) (the Act), we have calculated an individual rate for the company under investigation, Incheon Metal which is the producer/exporter of the subject merchandise under investigation. We determine the total estimated net countervailable subsidy rates are as follows:

Producer/Exporter	Net Subsidy Rate
Incheon Metal Co., Ltd .....	<i>de minimis</i> percent <i>ad valorem</i>
All Others .....	<i>de minimis</i> percent <i>ad valorem</i>

In the *Preliminary Determination*, the total net countervailable subsidy rate was *de minimis* and, therefore, we did not suspend liquidation. Because the rate for Incheon Metal remains *de minimis*, we are not directing U.S. Customs and Border Patrol to suspend liquidation of entries of Ni-resist pistons from Korea.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

**Return or Destruction of Proprietary Information**

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO)

of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

<sup>1</sup> The public version of the verification report and all public reports are on file in the Central Records

Unit, Room 1117 in the main building of the Department.

Dated: September 14, 2009.

**Ronald K. Lorentzen,**  
*Acting Assistant Secretary for Import  
Administration.*

## Appendix—Issues and Decision Memorandum

### List of Comments and Issues in the Decision Memorandum

*Comment 1:* Whether the Tax Benefits  
under the Namdong National Industrial  
Complex are Countervailable

*Comment 2:* Whether the Technical  
Development for Innovation Production  
Environment Program is de facto  
Specific

*Comment 3:* Whether the Department  
Should Expand the POI

[FR Doc. E9–22647 Filed 9–18–09; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Notice of Public Meeting

**SUMMARY:** The Advisory Committee on  
Commercial Remote Sensing (ACCRES)  
will meet October 8, 2009.

**DATES:** *Date and Time:* The meeting is  
scheduled as follows: October 8, 2009,  
9 a.m.–4 p.m. The first part of this  
meeting will be closed to the public.  
The public portion of the meeting will  
begin at 2 p.m.

**ADDRESSES:** The meeting will be held in  
the Ronald Reagan Conference Center  
Polaris Suite located at 1300  
Pennsylvania Ave., NW., Washington,  
DC 20004. The public portion of the  
meeting may have limited seating  
capacity.

**SUPPLEMENTARY INFORMATION:** As  
required by section 10(a)(2) of the  
Federal Advisory Committee Act, 5  
U.S.C. App. (1982), notice is hereby  
given of the meeting of ACCRES.  
ACCRES was established by the  
Secretary of Commerce (Secretary) on  
May 21, 2002, to advise the Secretary  
through the Under Secretary of  
Commerce for Oceans and Atmosphere  
on long- and short-range strategies for  
the licensing of commercial remote  
sensing satellite systems.

### Matters To Be Considered

During this open public meeting, the  
Committee will receive updates on  
NOAA's Commercial Remote Sensing  
Regulatory Affairs (CRSRA) activities.  
The Committee will also be available to  
receive public comments on its  
activities.

### Special Accommodations

These meetings are physically  
accessible to people with disabilities.  
Requests for special accommodations  
may be directed to ACCRES, NOAA/  
NESDIS CRSRA office, 1335 East-West  
Highway, Room 8260, Silver Spring,  
Maryland 20910.

### Additional Information and Public Comments

Any member of the public wishing  
further information concerning the  
meeting or who wishes to submit oral or  
written comments should contact Jane  
D'Aguianno, Designated Federal Official  
for ACCRES, NOAA/NESDIS/CRSRA,  
1335 East-West Highway, Room 8260,  
Silver Spring, Maryland 20910. Copies  
of the draft meeting agenda can be  
obtained from David Hasenauer at (301)  
713–1644, fax (301) 713–0406, or e-mail  
[crsra@noaa.gov](mailto:crsra@noaa.gov)

The ACCRES expects that public  
statements presented at its meetings will  
not be repetitive of previously-  
submitted oral or written statements. In  
general, each individual or group  
making an oral presentation may be  
limited to a total time of five minutes.  
Written comments (please provide at  
least 13 copies) received in the NOAA/  
NESDIS Commercial Remote Sensing  
Regulatory Affairs Office on or before  
March 31, 2009, will be provided to  
Committee members in advance of the  
meeting. Comments received too close  
to the meeting date will normally be  
provided to Committee members at the  
meeting.

**FOR FURTHER INFORMATION CONTACT:** Jane  
D'Aguianno, NOAA/NESDIS  
Commercial Remote Sensing Regulatory  
Affairs Office, 1335 East-West Highway,  
Room 8260, Silver Spring, Maryland  
20910; telephone (301) 713–3385, fax  
(301) 713–0204, e-mail  
[Jane.Daguianno@noaa.gov](mailto:Jane.Daguianno@noaa.gov), David

Hasenauer at (301) 713–1644, fax (301)  
713–0406, or e-mail  
[David.Hasenauer@noaa.gov](mailto:David.Hasenauer@noaa.gov).

**Mary E. Kicza,**  
*Assistant Administrator for Satellite and  
Information Service.*  
[FR Doc. E9–22644 Filed 9–18–09; 8:45 am]  
BILLING CODE 3510–HR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Membership of the National Oceanic and Atmospheric Administration Performance Review Board

**AGENCY:** National Oceanic and  
Atmospheric Administration (NOAA),  
Department of Commerce.

**ACTION:** Notice of membership of the  
NOAA Performance Review Board.

**SUMMARY:** In accordance with 5 U.S.C.  
4314(c)(4), NOAA announces the  
appointment of three new members to  
serve with the current membership on  
the NOAA Performance Review Board  
(PRB). The NOAA PRB is responsible  
for reviewing performance appraisals  
and ratings of Senior Executive Service  
and Senior Professional members and  
making written recommendations to the  
appointing authority on retention and  
compensation matters, including  
performance-based pay adjustments,  
awarding of bonuses and reviewing  
recommendations for potential  
Presidential Rank Award nominees. The  
appointment of members to the NOAA  
PRB will be for a period of 12 months.

**DATES:** *Effective Date:* The effective date  
of service of the three new appointees  
to the NOAA Performance Review  
Board is September 30, 2009.

**FOR FURTHER INFORMATION CONTACT:**  
Sabrina D. Lewis, Executive Resources  
Program Manager, Workforce  
Management Office, NOAA, 1305 East-  
West Highway, Silver Spring, Maryland  
20910, (301) 713–6306.

**SUPPLEMENTARY INFORMATION:** The  
names and position titles of the  
members of the NOAA PRB are set forth  
below:

John E. Oliver, Jr. ....	Deputy Assistant Administrator for Operations, National Marine Fisheries Service.
Maureen E. Wylie ....	Chief Financial Officer.
Vickie L. Nadolski ....	Deputy Assistant Administrator, National Weather Service.
Charles S. Baker ....	Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service.
Alexander E. MacDonald ....	Deputy Assistant Administrator for Laboratories and Cooperative Institutes and Director, ESRL, Of- fice of Oceanic and Atmospheric Research.
John S. Gray III ....	Director, Office of Legislative Affairs.
Paul N. Doremus ....	Director, Strategic Planning Office of Program Planning and Integration.
David M. Kennedy ....	Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.
Tyra D. Smith ....	Director, Human Resources Bureau of the Census, Department of Commerce.

Justin H. Kenney ..... Director, Office of Communications, Office of the Under Secretary.  
 Craig N. McLean ..... Deputy Assistant Administrator for Programs and Administration, Office of Oceanic and Atmospheric Research.  
 Rebecca J. Lent ..... Director, International Affairs, National Marine Fisheries Service.  
 Deidre R. Jones ..... Director, Systems Engineering Center, National Weather Service.  
 Joseph F. Klimavicz ..... Chief Information Officer and Director for High Performance Computing and Communications.  
 Louisa Koch ..... Director, Office of Education.  
 Louis W. Uccellini ..... Director, National Centers for Environmental Prediction, National Weather Service.  
 Samuel D. Rauch III ..... Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.  
 Margaret F. Spring ..... Chief of Staff for NOAA.  
 Kathleen A. Kelly ..... Director, Office of Satellite Operations, National Environmental Satellite, Data and Information Service.  
 Daniel J. Basta ..... Director, Office of National Marine Sanctuaries, National Ocean Service.  
 William Corso ..... Technical Director, National Ocean Service.

Dated: September 15, 2009.

**Jane Lubchenco,**

*Under Secretary of Commerce for Oceans and Atmosphere.*

#### 2009 NOAA PERFORMANCE REVIEW BOARD MEMBERS

Member	Title	Line office	Term expires
<b>2009 PRB Members</b>			
John E. Oliver, Jr., Chair .....	Deputy Assistant Administrator for Operations.	National Marine Fisheries Service .....	09/29/10
Maureen E. Wylie, Co-Chair .....	Chief Financial Officer .....	Office of the Chief Financial Officer .....	09/29/10
Vickie L. Nadolski .....	Deputy Assistant Administrator for Weather Services.	National Weather Service .....	09/29/10
Charles S. Baker .....	Deputy Assistant Administrator, NESDIS .....	National Environmental Satellite, Data and Information Service.	09/29/10
Paul N. Doremus .....	Director, Office of Strategic Planning .....	Office of Program Planning and Integration	09/29/10
Alexander E. MacDonald .....	Deputy Assistant Administrator for Laboratories and Cooperative Institutes and Director, ESRL.	Oceanic and Atmospheric Research .....	09/29/10
John S. Gray III .....	Director, Legislative Affairs .....	Office of Legislative Affairs .....	09/29/10
David M. Kennedy .....	Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.	National Ocean Service .....	09/29/10
Tyra D. Smith .....	Director, Human Resources .....	Bureau of the Census, DOC .....	09/29/10
<b>2009 Alternate Members</b>			
Rebecca J. Lent .....	Director, International Affairs .....	National Marine Fisheries Service .....	09/29/10
Craig N. McLean .....	Deputy Assistant Administrator for Programs and Administration.	Office of Oceanic and Atmospheric Research.	09/29/10
Louisa Koch .....	Director, Office of Education .....	Office of Education .....	09/29/10
Deidre R. Jones .....	Director, Systems Engineering Center .....	National Weather Service .....	09/29/10
Louis W. Uccellini .....	Director, National Centers for Environmental Prediction.	National Weather Service .....	09/29/10
Samuel D. Rauch III .....	Deputy Assistant Administrator for Regulatory Programs.	National Marine Fisheries Service .....	09/29/10
Margaret F. Spring .....	Chief of Staff for NOAA .....	Office of the Under Secretary .....	09/29/10
Joseph F. Klimavicz .....	Chief Information Officer .....	Office of the Deputy Under Secretary .....	09/29/10
Kathleen A. Kelly .....	Director, Office of Satellite Operations .....	National Environmental Satellite, Data and Information Service.	09/29/10
Daniel J. Basta .....	Director, Office of National Marine Sanctuaries.	National Ocean Service .....	09/29/10
Justin H. Kenney .....	Director, Office of Communications .....	Office of the Under Secretary .....	09/29/10
William Corso .....	Technical Director .....	National Ocean Service .....	09/29/09

[FR Doc. E9-22598 Filed 9-18-09; 8:45 am]

BILLING CODE 3510-12-P

#### CONSUMER PRODUCT SAFETY COMMISSION

##### Submission for OMB Review; Comment Request—Requirements for Electrically Operated Toys and Children's Articles

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information

associated with the Commission's safety standard for electrically operated toys and children's articles.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by October 21, 2009.

**ADDRESSES:** Written comments on this request for extension of approval of information collection requirements should be captioned "Electrically Operated Toys" and submitted by October 21, 2009 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, 4330 East West Highway, Bethesda, MD 20814 by e-mail at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or by mail or by facsimile at (301) 504-0127.

**FOR FURTHER INFORMATION CONTACT:** Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, Washington, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7671 or by e-mail to [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 8, 2009 (74 FR 32572), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children (16 CFR part 1505). No comments were received in response to that notice.

The regulations in Part 1505 establish performance and labeling requirements for electrically operated toys and children's articles to reduce unreasonable risks of injury to children from electric shock, electrical burns, and thermal burns associated with those products. Section 1505.4(a)(3) of the regulations requires manufacturers and importers of electrically operated toys and children's articles to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and

distribution of electrically operated toys and children's articles.

The records of testing and other information required by the regulations allow the Commission to determine if electrically operated toys and children's articles comply with the requirements of the regulations in Part 1505. If the Commission determines that products fail to comply with the regulations, this information also enables the Commission and the firm to: (i) Identify specific lots or production lines of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

#### **Additional Information About the Request for Extension of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, 16 CFR Part 1505.

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers and importers of electrically operated toys and children's articles.

*Estimated number of respondents:* 40 per year.

*Estimated average number of hours per respondent (testing):* 6,400 per year.

*Estimated average number of hours per respondent (recordkeeping and labeling):* 1,800 per year.

*Estimated cost of collection for all respondents:* \$400,084 per year.

Dated: September 16, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-22666 Filed 9-18-09; 8:45 am]

**BILLING CODE 6355-01-P**

#### **CONSUMER PRODUCT SAFETY COMMISSION**

##### **Submission for OMB Review; Comment Request—Safety Standard for Omnidirectional Citizens Band Base Station Antennas**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) announces that it has submitted to the

Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for omnidirectional citizens band base station antennas.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted not later than October 21, 2009.

**ADDRESSES:** Written comments on this request for extension of approval of information collection requirements should be captioned "Citizens Band Base Station Antennas" and submitted by October 21, 2009 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340, and (2) the Office of the Secretary, by e-mail at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or sent to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Written comments may also be sent by facsimile at (301) 504-0127.

**FOR FURTHER INFORMATION CONTACT:** Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7671, e-mail: [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 8, 2009 (74 FR 32571), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Omnidirectional Citizens Band Base Station (16 CFR Part 1204). No comments were received in response to that notice.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury which may result if an antenna contacts overhead power lines while being erected or removed from its site. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to

the standard to test antennas for compliance with the standard, and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that antennas subject to the standard comply with its requirements. This information would also enable the Commission to obtain corrective actions if omnidirectional citizens band base station antennas failed to comply with the standard in a manner which creates a substantial risk of injury to the public.

#### **Additional Information About the Request for Extension Of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Safety Standard for Omnidirectional Citizens Band Base Station Antennas, 16 CFR Part 1204.

*Type of Request:* Extension of approval without change.

*General description of respondents:* Manufacturers, importers, and private labelers of omnidirectional citizens band base station antennas.

*Estimated number of respondents:* 5 per year.

*Estimated number of hours per respondent:* 220 per year.

*Estimated number of hours for all respondents:* 1,100 per year.

*Estimated cost of collection for all respondents:* \$60,400 per year.

Dated: September 16, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-22671 Filed 9-18-09; 8:45 am]

BILLING CODE 6355-01-P

#### **CONSUMER PRODUCT SAFETY COMMISSION**

[Docket No. CPSC-2009-0073]

#### **Proposed Collection; Comment Request—Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (“CPSC” or “Commission”) requests comments on a proposed collection of information regarding a form that will be used to verify whether pools and spas are in compliance with the Virginia Graeme

Baker Pool and Spa Safety Act. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

**DATES:** Written comments must be received by the Office of the Secretary not later than November 20, 2009.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2009-0073, by any of the following methods:

Submit electronic comments in the following way:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

Submit written submissions in the following way:

*Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to:* Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7671 or by e-mail to [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Virginia Graeme Baker Pool and Spa Safety Act (“Pool and Spa Safety Act”) went into effect on December 19, 2008 (Pub. L. 110-140). The Pool and Spa Safety Act applies to public pools and spas and requires that each swimming pool and spa drain cover

manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or drain cover pursuant to section 1404(b) of the Act (“Drain Cover Standard”). In addition to the anti-entrapment devices or systems, each public pool and spa in the United States with a single main drain other than an unblockable drain is required to be equipped with 1 or more of the following devices and systems designed to prevent entrapment by pool or spa drains: safety vacuum release system; suction-limiting vent system; gravity drainage system; automatic pump shut-off system or drain disablement. The Pool and Spa Safety Act is designed to prevent the tragic and hidden hazard of drain entrapment and eviscerations in public pools and spas.

The CPSC staff will use a “Verification of Compliance Form” to collect the information necessary to identify drain covers at pools and spas that do not meet the requirements of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or drain cover. CPSC investigators or designated state or local government officials will use the form which will be filled out entirely at the site during the normal course of the pool and spa inspection. Using the form, the inspectors will collect information regarding the pool or spa facility; identify the type, location and features of the pool or spa; describe the drain covers, anti-entrapment device/systems, sump or equalizer lines at the site; and report on whether any actions are necessary to bring the pool or spa into compliance.

##### **B. Estimated Burden**

The CPSC staff estimates that there may be approximately 97 inspections per year. Because the investigators will be talking to either the pool owner/operator or pool staff at the time of the inspection and asking questions to help complete the form, the CPSC staff estimates that the burden hours for pool owners or pool staff to respond to the questions will be approximately 0.5 hours per inspection. Thus, the estimated total annual burden hours for respondents are approximately 48.5 hours (97 inspections × 0.5 hours per inspection). Although respondents may include either junior or senior pool staff, CPSC staff based the annualized cost to respondents based on the compensation for management-level employees, since such employees may be the most knowledgeable of the pool or spa used.

The CPSC staff estimates that the annualized cost to all respondents is approximately \$2,300.84 based on an hourly wage of \$47.44 per hour (\$47.44 × 48.5). (Bureau of Labor Statistics ("BLS"), December 2008, all workers, service, management, professional, and related).

The CPSC staff estimates that it will take an average of 2.5 hours to review the information collected from the oral communications with pool owners/operators or staff. The annual cost to the Federal government of the collection of information in these regulations is estimated to be \$19,361.21. This is based on an average wage rate of \$55.97 (the equivalent of a GS-14 Step 5 employee). This represents 70.1 percent of total compensation with an additional 29.9 percent coming from benefits (BLS, September 2008, percentage total benefits for all civilian management, professional, and related employees), or \$79.84 × 242.5 hours.

### C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: September 16, 2009.

**Todd A. Stevenson,**  
Secretary, Consumer Product Safety Commission.

[FR Doc. E9-22674 Filed 9-18-09; 8:45 am]

BILLING CODE 6355-01-P

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for walk-behind power lawn mowers.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by October 21, 2009.

**ADDRESSES:** Written comments on this request for extension of approval of information collection requirements should be captioned "Walk-Behind Power Lawn Mowers" and submitted by October 21, 2009 to (1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395-7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, by e-mail at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or by mail or by facsimile at (301) 504-0127.

**FOR FURTHER INFORMATION CONTACT:** Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7671 or by e-mail to [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 13, 2009 (74 FR 33417), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205). One comment was received in support of the proposed collection of information in response to that notice.

The Safety Standard for Walk-Behind Power Lawn Mowers establishes performance and labeling requirements for mowers to reduce unreasonable risks of injury resulting from accidental contact with the moving blades of mowers. Certification regulations implementing the standard require

manufacturers, importers and private labelers of mowers subject to the standard to test mowers for compliance with the standard, and to maintain records of that testing. The records of testing and other information required by the certification regulations allow the Commission to determine that walk-behind power mowers subject to the standard comply with its requirements. This information also enables the Commission to obtain corrective actions if mowers fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

### Additional Information About the Request for Extension of Approval of a Collection of Information

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR part 1205.

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers, importers, and private labelers of walk-behind power lawn mowers.

*Estimated number of respondents:* 20 per year.

*Estimated average number of hours per respondent:* 390 per year.

*Estimated number of hours for all respondents (testing and recordkeeping):* 7,800 per year.

*Estimated number of hours for all respondents (labeling):* 2,600 per year.

*Estimated cost of collection for all respondents (testing, recordkeeping, and labeling):* \$498,626 per year.

Dated: September 16, 2009.

**Todd A. Stevenson,**  
Secretary, Consumer Product Safety Commission.

[FR Doc. E9-22663 Filed 9-18-09; 8:45 am]

BILLING CODE 6355-01-P

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Safety Standard for Cigarette Lighters

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of

approval of a collection of information associated with the Commission's safety standard for cigarette lighters.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by October 21, 2009.

**ADDRESSES:** Written comments on this request for extension of approval of information collection requirements should be captioned "Cigarette Lighters" and submitted by October 21, 2009 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340, and (2) the Office of the Secretary, by e-mail at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov) or sent to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Written comments may also be sent by facsimile at (301) 504-0127.

**FOR FURTHER INFORMATION CONTACT:**

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7671 or by e-mail to [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of July 8, 2009 (74 FR 32573), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Cigarette Lighters (16 CFR Part 1210). One comment was received in response to the July 8, 2009 notice, stating that the continued testing and data collection should not be collected annually since it is unlikely that new lighters are manufactured differently than existing lighters.

The regulations at 16 CFR part 1210, subpart B, do not require annual testing or certification of each new lighter. The Safety Standard for Cigarette Lighters requires disposable and novelty lighters to be manufactured with a mechanism to resist operation by children younger than five years of age. Certification regulations implementing the standard require manufacturers and importers to submit to the Commission a description of each model of lighter, results of prototype qualification tests for

compliance with the standard, and a physical specimen of the lighter before the introduction of each model of lighter in commerce. Moreover, the regulations at 16 CFR 1210.14, allows for testing purposes, the comparison of a new model to a previously tested model, as long as the differences between the two do not adversely affect the child-resistance feature or design of the lighter.

The Commission uses the records of testing and other information required by the certification regulations to determine that disposable and novelty lighters have been tested and certified for compliance with the standard by the manufacturer or importer. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

**Additional Information About the Request for Extension of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Safety Standard for Cigarette Lighters, 16 CFR Part 1210.

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers and importers of disposable and novelty cigarette lighters.

*Estimated number of respondents:* 20 per year.

*Estimated average number of hours for testing, recordkeeping, and reporting per respondent:* 5,500 per year.

*Estimated cost of collection for all respondents:* \$200,000 to \$501,000 per year.

Dated: September 16, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-22664 Filed 9-18-09; 8:45 am]

**BILLING CODE 6355-01-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

**Submission for OMB Review; Comment Request—Safety Standard for Automatic Residential Garage Door Operators**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C.

Chapter 35), the Consumer Product Safety Commission (Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for automatic residential garage door operators.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by October 21, 2009.

**ADDRESSES:** Written comments on this request for extension of approval of information collection requirements should be captioned "Residential Garage Door Operators" and submitted by October 21, 2009 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395-7340, and (2) the office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 by e-mail at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov) or sent to that address. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504-0127.

**FOR FURTHER INFORMATION CONTACT:**

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, Washington, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7671 or by e-mail to [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** The Consumer Product Safety Improvement Act of 1990 (Pub. L. 101-608, 104 Stat. 3110) requires all automatic residential garage door openers manufactured after January 1, 1993, to comply with the entrapment protection requirements of UL Standard 325 that were in effect on January 1, 1992. In 1992, the Commission codified the entrapment protection provisions of UL Standard 325 in effect on January 1, 1992, as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211, subpart A. Certification regulations implementing the standard require manufacturers, importers and private labelers of garage door operators subject to the standard to test their products for compliance with the standard, and to maintain records of that testing. Those regulations are codified at 16 CFR part 1211, subparts B and C.

The Commission uses the records of testing and other information required by the certification regulations to determine that automatic residential garage door operators subject to the standard comply with its requirements. The Commission also uses this information to obtain corrective actions if garage door operators fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

In the **Federal Register** of July 8, 2009 (74 FR 32570), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). No comments were received in response to that notice.

#### **Additional Information About the Request for Extension of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211.

*Type of request:* Approval of a collection of information.

*General description of respondents:* Manufacturers, importers, and private labelers of automatic residential garage door operators.

*Estimated number of respondents:* 21 per year.

*Estimated average number of hours per respondent:* 40 per year.

*Estimated number of hours for all respondents:* 840 per year.

*Estimated cost of collection for all respondents:* \$22,800 per year.

Dated: September 16, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-22673 Filed 9-18-09; 8:45 am]

**BILLING CODE 6355-01-P**

## **CONSUMER PRODUCT SAFETY COMMISSION**

### **Sunshine Act Meetings**

**TIME AND DATE:** Thursday, September 17, 2009, 1 p.m.

**PLACE:** Room 714, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland 20814.

**STATUS:** Closed to the Public.

## **MATTER TO BE CONSIDERED:**

### **Internal Procedures**

The Commission will discuss matters relating to internal procedures for Commission decisionmaking.

For a recorded message containing the latest agenda information, call (301) 504-7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7923.

Dated: September 15, 2009.

**Todd A. Stevenson,**  
*Secretary.*

[FR Doc. E9-22651 Filed 9-18-09; 8:45 am]

**BILLING CODE M**

## **DEPARTMENT OF ENERGY**

### **Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, October 14, 2009 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 576-4025; Fax (865) 576-2347 or e-mail: [halseypj@oro.doe.gov](mailto:halseypj@oro.doe.gov) or check the Web site at <http://www.oakridge.doe.gov/em/ssab>.

### **SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:* Presentation on the Groundwater Treatability Study at East Tennessee Technology Park.

*Public Participation:* The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to

accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Pat Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: <http://www.oakridge.doe.gov/em/ssab/minutes.htm>.

Issued at Washington, DC on September 16, 2009.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E9-22610 Filed 9-18-09; 8:45 am]

**BILLING CODE 6450-01-P**

## **DEPARTMENT OF ENERGY**

### **Western Area Power Administration**

#### **Modification of the Groton Generation Station Interconnection Agreement, Brown County, SD**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement and conduct a scoping meeting.

**SUMMARY:** The Western Area Power Administration (Western), an agency of the DOE, intends to prepare an Environmental Impact Statement<sup>1</sup> (EIS) on modifying its Large Generator Interconnection Agreement (LGIA) with Basin Electric Power Cooperative (Basin Electric) to eliminate current operating limits for the Groton Generation Station. Basin Electric currently owns and operates the generating station with a

<sup>1</sup> On October 4, 1999, Department of Energy's Assistant Secretary for Environmental, Safety and Health delegated to Western's Administrator the authority to approve EISs for integrating transmission facilities with Western's transmission grid.

condition in the LGIA that limits the output of the generating station to 50 average megawatts (MW). Western is issuing this notice to inform the public and interested parties about Western's intent to prepare an EIS, conduct a public scoping process, and invite the public to comment on the scope, proposed action, alternatives, and other issues to be addressed in the EIS.

While Western's proposed Federal action would be limited to contractual modifications, the EIS will identify and review the environmental impacts of operating the Groton Generating Station above the 50 average MW limit.

**DATES:** The public scoping period begins with the publication of this notice and closes on October 23, 2009. An open-house public scoping meeting will be held on October 7, 2009, from 4 p.m. to 7 p.m. CST.

**ADDRESSES:** The open-house public scoping meeting will be held at Groton Community Center, 109 West 3rd Avenue, Groton, SD 57445. Written comments on the scope of the EIS should be addressed to Ms. Erika Walters, NEPA Document Manager, Western Area Power Administration, Corporate Services Office, P.O. Box 281213, Lakewood, CO 80228-8213, fax (720) 962-7279, or e-mail [walters@wapa.gov](mailto:walters@wapa.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Erika Walters, NEPA Document Manager, Western Area Power Administration, Corporate Services Office, P.O. Box 281213, Lakewood, CO 80228-8213, fax (720) 962-7279, or e-mail [walters@wapa.gov](mailto:walters@wapa.gov). For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586-4600 or (800) 472-2756.

**SUPPLEMENTARY INFORMATION:** Western, an agency within DOE, markets Federal hydroelectric power to preference customers, as specified by law. These customers include municipalities, cooperatives, irrigation districts, Federal and State agencies, and Native American tribes. Western's service territory covers 15 western states, including South Dakota. Western owns and operates more than 17,000 miles of high-voltage transmission lines.

### Project Description

Basin Electric currently owns and operates the Groton Generation Station in Brown County, South Dakota. Groton Generation Station has two generating units. Each unit is powered by a GE

LMS100® simple cycle gas turbine rated at 100 MW at design conditions. Unit 1 went into commercial operation on July 1, 2006, and Unit 2 went into commercial operation on July 1, 2008. Basin Electric currently operates the generating station with a condition in its LGIA with Western that limits the output of the generating station to 50 average MW. Basin Electric proposes to modify the LGIA with Western to eliminate the 50 average MW administrative limit on its generating station, so it can produce power above the 50 average MW limit. Basin Electric needs to eliminate the operating limit to help serve increased load demand for electric power in the eastern portion of its service area. Basin Electric's eastern service area comprises western Nebraska, northwestern and central Iowa, portions of southern Minnesota, all of South Dakota, portions of eastern Montana, and western and central North Dakota. The need for additional generating capacity is driven by the increasing electrical power usage of the Basin Electric membership consumers. Between 1999 and 2006, Basin Electric's total system peak demand increased 752 MW from 1,195 MW to 1,947 MW, or approximately 107 MW per year. In 2007, Basin Electric prepared a forecast showing load and capability surpluses/deficits through the year 2021. The forecast predicts that, by 2014, there will be a deficit of 800–900 MW for the eastern portion of their service area.

The interconnection of each generating unit with Western's transmission system was addressed in separate environmental assessments; East Side Peaking Project, South Dakota, (DOE/EA-1524) and Groton Generating Station Project, South Dakota (DOE/EA-1524-S1). Based on these environmental assessments, which included the 50 MW operating limit provision, Western issued separate findings of no significant impact with determinations that the preparation of an EIS was not required on July 25, 2005, and June 20, 2008, respectively.

### Proposed Agency Action and Alternatives

In response to Basin Electric's request, Western's proposed Federal action is to modify the LGIA with Basin Electric under its Open Access Transmission Service Tariff. Upon completion of the EIS, Western will make a decision whether or not to modify the LGIA to remove the 50 average MW limit. Western will also consider the no-action alternative in the EIS. Under the no-action alternative Western would not modify the LGIA and the current operating limits would remain.

### Agency Responsibilities

Because the proposed contract modification would result in incorporating a major new generation resource into Western's power transmission system, Western has determined that an EIS is required under DOE NEPA implementing procedures, 10 CFR part 1021, Subpart D, Appendix D, class of action D6. Western will be the lead Federal agency for preparing the EIS, as defined at 40 CFR 1501.5. Western will invite other Federal, State, local, and tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies may also make a request to Western to be a cooperating agency by contacting Ms. Walters at the address listed above in the **ADDRESSES** section.

### Environmental Issues

This notice is to inform agencies and the public of Western's intent to prepare an EIS and solicit comments and suggestions for consideration in the EIS. While Western's proposed Federal action would be limited to contractual modifications, the EIS will identify and review the environmental impacts of operating the Groton Generating Station above the 50 average MW limit. To help the public frame its comments, the following list contains potential environmental issues preliminarily identified for analysis in the EIS:

1. Impacts on human health and safety from additional operating hours, and
2. impacts on air and water resources (including air quality and surface water impacts).

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

### Public Participation

Public participation and full disclosure are planned for the entire EIS process. The EIS process will include the public open-house scoping meeting and a scoping comment period to solicit comments from interested parties; consultation and involvement with appropriate Federal, State, local, and tribal governmental agencies; public review and a hearing on the draft EIS; publication of a final EIS; and publication of a Record of Decision, expected in 2010. Western will hold the open-house public scoping meeting on October 7, 2009, in Groton, South

Dakota, as noted above. The purpose of the scoping meeting is to provide information about Western's Federal action and Basin Electric's Groton Generating Station, display maps, answer questions, and take written comments from interested parties. Attendees are welcome to come and go at their convenience and to speak one-on-one with Western and Basin Electric representatives.

The public will have the opportunity to provide written comments at the meeting. In addition, attendees may provide written comments by fax, e-mail, or mail as discussed under **DATES** above. To help define the scope of the EIS, comments should be received by Western no later than October 23, 2009.

Dated: August 27, 2009.

**Timothy J. Meeks,**  
*Administrator.*

[FR Doc. E9-22612 Filed 9-18-09; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8955-5]

### Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for New Jersey

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the State of New Jersey is revising its approved Public Water System Supervision Program to adopt EPA's National Primary Drinking Water Regulations for one major rule and six minor revisions and/or corrections. The EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, the EPA intends to approve these program revisions. All interested parties may request a public hearing.

**DATES:** This determination to approve New Jersey's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on his own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below by October 21, 2009. If a substantial request for a

public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective October 21, 2009.

**ADDRESSES:** Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007-1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

New Jersey Department of Environmental Protection, P.O. Box CN-426, 401 East State Street, Floor 3, Trenton, New Jersey 08625-0426.  
U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Ground Water Protection Section, 290 Broadway, New York, New York 10007-1866.

#### FOR FURTHER INFORMATION CONTACT:

Michael J. Lowy, Drinking Water Ground Water Protection Section, U.S. Environmental Protection Agency—Region 2, (212) 637-3830.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the United States Environmental Protection Agency (EPA) has determined to approve an application by the State of New Jersey Department of Environmental Protection to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final Rule;

promulgated by EPA January 22, 2001 (66 FR 6976), Revision to IESWTR/Stage 1 DBPR, Revision to State Primacy Requirement to Implement SDWA Amendments; promulgated by EPA February 12, 2001 (66 FR 9903), Methods Update Final Rule; Final Rule; promulgated by EPA October 23, 202 (67 FR 65220), National Primary Drinking Water Regulations Minor Revisions to PN Rule, CCR Rule, Primacy Rule; Final Rule; promulgated by EPA November 27, 2002 (67 FR 70850), Approval of Additional Methods for the Detection of Coliforms and E. coli; Final Rule; promulgated by EPA February 13, 2004 (69 FR 7156), Minor Corrections and Clarification to Drinking Water Regulations, National Primary Drinking Water Regulations for Lead and Copper Rule; Final Rule; promulgated by EPA June 29, 2004 (69 FR 38850), Analytical Method for Uranium; Final Rule; promulgated by EPA August 25, 2004 (69 FR 52176).

The application demonstrates that New Jersey has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that New Jersey's regulations are no less stringent than the corresponding Federal Regulations and that New Jersey continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

**Authority:** (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g-2, and 40 CFR 142.10, 142.12(d) and 142.13).

Dated: August 17, 2009.

**Barbara Finazzo,**

*Acting Regional Administrator, Region 2.*

[FR Doc. E9-22619 Filed 9-18-09; 8:45 am]

**BILLING CODE 6560-50-P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Sunshine Act Notice

**AGENCY HOLDING THE MEETING:** Equal Employment Opportunity Commission.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 74 FR 46992, Monday, September 14, 2009.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** Thursday, September 17, 2009, 9:30 a.m. (Eastern Time).

**CHANGE IN THE MEETING:** The meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Stephen Llewellyn, Executive Officer on (202) 663-4070.

Dated: September 16, 2009.

**Stephen Llewellyn,**

*Executive Officer, Executive Secretariat.*

[FR Doc. E9-22774 Filed 9-17-09; 11:15 am]

BILLING CODE 6570-01-P

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

### Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before November 20, 2009.

**ADDRESSES:** You may submit comments, identified by *Reg G* or *Reg H-7* by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- *Fax:* 202-452-3819 or 202-452-3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at [www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm) as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission including, the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: <http://www.federalreserve.gov/boarddocs/reportforms/review.cfm> or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202-452-

3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

*Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following information collections:*

(1) *Report title:* Disclosure and Reporting Requirements of CRA-Related Agreements.

*Agency form number:* Reg G.

*OMB control number:* 7100-0299.

*Frequency:* On occasion and annual.

*Reporters:* Insured depository institutions (IDIs) and nongovernmental entities or persons (NGEPs).

*Annual reporting hours:* 78 hours.

*Number of respondents:* 3 IDI and 6 NGEPs.

*Estimated average hours per response:* 1 hour (6 disclosure requirements and 1 annual report) and 4 hours (2 annual reports).

*General description of report:* This information collection is required pursuant to the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831y(b) and (c). The FDI Act authorizes the Federal Reserve to require the disclosure and reporting requirements of Regulation G (12 CFR 207). In general, the Federal Reserve does not consider individual respondent commercial and financial information collected by the Federal Reserve pursuant to Regulation G as confidential. However, a respondent may request confidential treatment pursuant to section (b)(4) of Freedom of Information Act, 5 U.S.C 552(b)(4).

*Abstract:* Section 48 of the FDI Act imposes disclosure and reporting requirements on IDIs, their affiliates and NGEPs that enter into written agreements that meet certain criteria. The written agreements must (1) be made in fulfillment of the Community Reinvestment Act of 1977 (CRA) and (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than \$10,000 in a year, or loans with an aggregate principal value of more than \$50,000 in a year. Section 48 excludes from the disclosure and reporting requirements any agreement between an IDI or its affiliate and an NGEP if the NGEP has not contacted the IDI or its affiliate, or a banking agency, concerning the CRA performance of the IDI.

Regulation G contains four disclosure requirements and two reporting requirements for IDIs and affiliates and two disclosure requirements and one reporting requirement for NGEPs. Please

see the agency's OMB supporting statement for a summary of the disclosure and reporting requirements of Regulation G, <http://www.federalreserve.gov/boarddocs/reportforms/review.cfm>.

The disclosure and reporting requirements in connection with Regulation G are mandatory and apply to state member banks and their subsidiaries; bank holding companies; affiliates of bank holding companies, other than banks, savings associations, and subsidiaries of banks and savings associations; and NGEPS that enter into covered agreements with any of the aforementioned companies.

(2) *Report title:* Disclosure Requirements in Connection With Regulation H (Consumer Protections in Sales of Insurance).

*Agency form number:* Reg H-7.

*OMB control number:* 7100-0298.

*Frequency:* On occasion.

*Reporters:* State member banks.

*Annual reporting hours:* 13,451 hours.

*Number of respondents:* 854.

*Estimated average hours per response:* 1.5 minutes.

*General description of report:* This information collection is mandatory pursuant the Federal Deposit Insurance Act, 12 U.S.C. 1831x. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises.

*Abstract:* Section 305 of the Gramm-Leach-Bliley Act requires financial institutions to provide written and oral disclosures to consumers in connection with the initial sale of an insurance product or annuity concerning its uninsured nature and the existence of the investment risk, if appropriate, and the fact that insurance sales and credit may not be tied.

Covered persons must make insurance disclosures before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure must be made orally and in writing to the consumer that: (1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the financial institution or an affiliate of the financial institution; (2) the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation or any other agency of the United States, the financial institution, or (if applicable) an affiliate of the financial institution; and (3) in the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

Covered persons must make a credit disclosure at the time a consumer

applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold. The disclosure must be made orally and in writing that the financial institution may not condition an extension of credit on either: (1) The consumer's purchase of an insurance product or annuity from the financial institution or any of its affiliates; or (2) the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Please see the agency's OMB supporting statement for a summary of the disclosure requirements of Regulation H-7 <http://www.federalreserve.gov/boarddocs/reportforms/review.cfm>.

Board of Governors of the Federal Reserve System, September 16, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9-22616 Filed 9-18-09; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 6, 2009.

**A. Federal Reserve Bank of Cleveland** (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *The Davis family, consisting of Clay Parker Davis; Jodie Davis Owings; Scott H. Owings; Charles W. Owings; The Cooper Family, consisting of Cornelia D. Cooper, individually, and as Executrix of The Estate of Richard E. Cooper, all of Somerset Kentucky; Cornelia C. Vaughan; Frank D. Cain, both of Lexington, Kentucky; The Merrick family, consisting of Odell Merrick; Deborah L. Merrick—Eades; Cameron D.*

*Merrick; Stephanie D. Merrick; Stephen D. Merrick; The Rakestraw family, consisting of Harris Rakestraw, III; Angel L. Rakestraw—Godby; Joy B. Carroll; Harris Rakestraw, III and Connie Belle Harris—Rakestraw, as Co—Trustees of The Benjamin H. Rakestraw—Godby Irrevocable Trust; The Waddle family, consisting of Cy Waddle, individually, and as Trustee of The Cy Waddle Revocable Living Trust; Gary C. Waddle; Thomas P. Waddle; Jean Waddle, individually, and as Trustee of The Jean Waddle Revocable Living Trust; The Hawkins Family, consisting of Virginia Hawkins, individually, and as Trustee of the James F. Hawkins Revocable Living Trust; James F. Hawkins, III; Judith A. Holtzclaw; James Hawkins, IV; Samantha Jo Hawkins, all of Somerset, Kentucky; and Marsha E. Hawkins—Barnett, of Corbin, Kentucky; to acquire voting shares of Citizens Bancshares, Inc., and thereby indirectly acquire voting shares of Citizens National Bank of Somerset, both of Somerset, Kentucky.*

Board of Governors of the Federal Reserve System, September 16, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9-22607 Filed 9-18-09; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (<http://www.fmc.gov>) or by contacting the Office of Agreements at (202) 523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).

*Agreement No.:* 011960-005.

*Title:* The New World Alliance Agreement.

*Parties:* American President Lines, Ltd.; APL Co. Pte, Ltd.; Hyundai Merchant Marine Co., Ltd.; and Mitsui O.S.K. Lines, Ltd. ("MOL").

*Filing Party:* David F. Smith, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment would authorize Hyundai to sub-charter space under the agreement to Hanjin Shipping Company, Ltd. The parties requested expedited review.

*Agreement No.:* 012057-004.

*Title:* CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Asia to USEC and PNW-Suez/PNW & Panama Loops.

*Parties:* A.P. Moller-Maersk A/S and CMA CGM S.A.

*Filing Party:* Wayne R. Rohde, Esq., Sher and Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment deletes Hyundai Merchant Marine Co., Ltd. as a party to the agreement, suspends the operation of a service loop, authorizes the parties to operate smaller vessels on the remaining service loop, and makes corresponding changes to the vessel provisions and space allocations under the agreement.

*Agreement No.:* 012078.

*Title:* CSCL/ELJSA Vessel Sharing Agreement—Asia and Pacific North West Coast Service.

*Parties:* China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; and the Evergreen Line Joint Service Agreement, including Evergreen Marine Corp. (Taiwan) Ltd., Evergreen Marine (UK) Ltd., Italia Marittima S.p.A., Evergreen Marine (Hong Kong) Ltd., and Evergreen Marine (Singapore) Pte Ltd.

*Filing Party:* Tara L. Leiter, Esq., Blank Rome LLP, Watergate, 600 New Hampshire Ave., NW., Washington, DC 20037.

*Synopsis:* The agreement authorizes the parties to share vessel space in the trade between U.S. Pacific Northwest ports and ports in Asia. The parties requested expedited review.

By Order of the Federal Maritime Commission.

Dated: September 16, 2009.

**Tanga S. FitzGibbon,**

*Assistant Secretary.*

[FR Doc. E9-22662 Filed 9-18-09; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (“Commission” or “FTC”).

**ACTION:** Notice.

**SUMMARY:** The FTC intends to conduct a study of food marketing to children and adolescents, as a follow-up to the study it published in 2008 on the same topic. For this reason, the FTC seeks public comments on proposed information requests to approximately 45 major food, beverage, and quick

service restaurant (QSR) companies. These comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA) of compulsory process orders to food, beverage, and QSR companies. The compulsory process orders will seek information from those companies concerning, among other things, their marketing activities and expenditures targeted to children and adolescents and nutritional information about the companies’ food and beverage products marketed to children and adolescents.

**DATES:** Comments on the proposed information requests must be received on or before November 23, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in Part III of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-foodmarketingPRA>) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Carol Jennings, Attorney, 202-326-3010, or Mary Johnson, Attorney, 202-326-3115, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

In July 2008, the FTC published a report entitled *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation*.<sup>1</sup> The report analyzed expenditures and marketing activities by 44 food companies across various promotional activity and food product categories for the year 2006. The report also reviewed policies and initiatives undertaken by companies to encourage healthy eating and lifestyle choices by children and adolescents, and evaluated

the extent to which companies had implemented recommendations of the report from a workshop on Marketing, Self-Regulation & Childhood Obesity that the FTC and the Department of Health and Human Services jointly convened in 2005.<sup>2</sup> Calendar year 2006 was an appropriate benchmark year for the FTC’s study – before the Council of Better Business Bureaus implemented its efforts to modify food advertising to children through the Children’s Food and Beverage Advertising Initiative, and early into the Alliance for a Healthier Generation’s efforts to reduce and change the nature of food and beverage marketing in schools.

The Commission obtained data and information for the 2006 study by issuing compulsory process orders to producers, distributors, and marketers of foods frequently advertised to children (ages 2-11) and adolescents (ages 12-17), such as carbonated and non-carbonated beverages, snacks, baked goods, cereals, prepared meals, candy, dairy products, and restaurant food.<sup>3</sup> The study found that the companies spent more than \$1.6 billion<sup>4</sup> marketing their products to children and adolescents in 2006, and employed a variety of techniques, including promotion through traditional measured media, the Internet and other “new” media, product packaging, and in-store advertising, as well as integrated campaigns that combined several techniques and cross-promotions with media and entertainment companies.

In addition to presenting the study findings, the Commission made several recommendations in the 2008 report, including:

(1) for companies that market food or beverage products to adopt meaningful nutrition-based standards for all products marketed to children under age 12, through all forms of advertising

<sup>2</sup> See Federal Trade Commission & Department of Health and Human Services, *Perspectives on Marketing, Self-Regulation & Childhood Obesity* (2006), available at (<http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>).

<sup>3</sup> Because the compulsory process orders were sent to ten or more entities, the PRA required the Commission to obtain approval from the OMB to conduct the study. The Commission published two *Federal Register* notices, at 71 FR 62109 (Oct. 23, 2006) and 72 FR 19505 (Apr. 18, 2007), in connection with the OMB submission. The OMB approved the Commission’s proposal to conduct the study on July 18, 2007.

<sup>4</sup> This figure does not include the cost of toys – estimated to total \$360 million – distributed by the reporting QSR companies with children’s meals because, in those cases, the consumer purchased the toy when paying for the meal and thus the toy technically did not fall within the definition of “premium” used in the compulsory process orders.

<sup>1</sup> The study was requested by Congress in conjunction with the Commission’s FY 2006 appropriation (Pub. L. 109-108). The Conference Report (H. R. Rep. No. 109-272 (2005)) for this appropriations law incorporated by reference language from the Senate Report (S. Rep. No. 109-88 (2005)) instructing the FTC to prepare a report on food industry marketing activities and expenditures targeted to children and adolescents.

and promotional techniques targeted to children;

(2) for food and beverage companies to define "marketing to children," for purposes of self-regulatory limitations, to encompass all advertising and promotional techniques, including: television, print, and radio; website, Internet, and digital advertising; word-of-mouth and viral advertising; product packaging and retail promotion; movie and video promotion; use of premiums in connection with the sale of a product; product placements, character licensing, and cross-promotion; athletic sponsorship; celebrity endorsements; and in-school marketing; and

(3) for media and entertainment companies to limit licensing of their characters to healthier foods and beverages that are marketed to children.

Further, the Commission indicated it would issue a follow-up report assessing the extent to which the 2008 report recommendations have been implemented and what, if any, additional measures may be warranted.

The proposed study will seek information in keeping with the 2006 study, including: (1) food industry marketing activities and expenditures targeted to children (ages 2-11) and adolescents (ages 12-17) for calendar year 2009; and (2) marketing to youth of a specific gender, race, ethnicity, or income level. The Commission additionally proposes to gather nutrition information about products the companies marketed to children and adolescents in calendar years 2006 and 2009, to evaluate possible changes in the nutritional content, and variety, of youth-marketed foods. The Commission also proposes to seek scientific and market research exploring psychological and other factors that may contribute to food advertising appeal among youth.

The FTC has the authority to compel production of this data and information from food, beverage, and QSR companies under Section 6(b) of the FTC Act, 15 U.S.C. § 46(b). The Commission intends to send its information requests to the corporate parents of these types of companies to assure that no relevant information from affiliated or subsidiary companies goes unreported. Because the number of separately incorporated companies affected by the Commission's requests will exceed nine entities, the Commission will seek OMB clearance under the PRA, 44 U.S.C. §§ 3501-3521, before sending any information requests.

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be

responsive to this information collection within the possession or control of a person, partnership, or corporation subject to the FTC Act may be subject to criminal prosecution. 15 U.S.C. § 50; *see also* 18 U.S.C. § 1505.

## II. Paperwork Reduction Act

As required by Section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB approve the study. Under the PRA, federal agencies must obtain OMB approval for each collection of information they conduct or sponsor if the same information collection is posed to ten or more entities.

"Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. § 3502(3); 5 CFR 1320.3(c).

Specifically, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The FTC encourages recipients of the 2007 compulsory process orders to offer suggestions on how the burden of the proposed collection may be reduced.

### A. Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to approximately 45 parent companies of food and beverage and QSR companies in the United States ("industry members"). The companies that will receive these information requests are those selling the categories of food and beverage products that appear to be advertised to youth most frequently. Specifically, these categories of products will include: breakfast cereal; snack foods; candy, including frozen and chilled desserts; dairy products, including milk and yogurt; baked goods; carbonated beverages; fruit juice and non-carbonated beverages; prepared foods and meals; and restaurant foods. In addition, the FTC proposes to collect information from major marketers of

fruits and vegetables to ensure that data and information are gathered regarding efforts to promote consumption of these foods among children and adolescents.

The information requests will seek data and information regarding, among other things: (1) the types of foods marketed to children and adolescents; (2) the types of promotional activities<sup>5</sup> used to market products to children and adolescents; (3) the amount spent to communicate marketing messages in measured and unmeasured media to children and adolescents; and (4) nutrition information (*e.g.*, from the product's "Nutrition Facts" label). The Commission will provide information on an anonymous or aggregated basis, in a manner sufficient to protect individual companies' confidential information, to provide a factual summary of food industry marketing activities and expenditures targeted to children and adolescents. *See* 15 U.S.C. § 57b-2(d)(1)(B).

### B. Estimated Hours Burden: 12,250 hours

The FTC staff's estimate of the hours burden is based on the time required to respond to each information request. The Commission intends to issue the information requests to approximately 45 parent companies of food, beverage, and QSR marketers. Because these companies vary in size, in the number of products they market to children and adolescents, and in the extent and variety of their marketing and advertising, the FTC staff has provided a range of the estimated hours burden for companies that market a single category of food products and for companies that market multiple categories of food.<sup>6</sup>

Based upon its knowledge of the industries, FTC staff estimates, on average, that the time required to gather,

<sup>5</sup> "Promotional activities" include use of traditional measured media (*e.g.*, television, print, and radio), new media (*e.g.*, website, Internet, digital advertising, word-of-mouth, and viral advertising), product packaging and in-store marketing, use of premiums, in-school marketing, and other traditional promotional activities (*e.g.*, product placement, movie and video promotion, character licensing and cross-promotion licensing fees, athletic sponsorship, celebrity endorsement, and event marketing).

<sup>6</sup> In response to the notice of proposed collection for the 2006 study, the FTC received a comment from the Grocery Manufacturers Association suggesting that the burden on companies is more likely to correlate with the number of brands a company markets rather than the number of food categories in which it markets products. Nevertheless, the FTC believes its ranges for estimated costs, which are separated into single-category and multiple-category company ranges, are sufficiently wide to account for differences in the number of individual brands the companies market in each category and in the amount of marketing the companies engage in for each brand.

organize, format, and produce such responses will range between 140 and 200 hours per information request for companies that market a single category of product to children and adolescents; thus, an average of 170 hours. Staff further estimates that companies marketing multiple categories of products to children and adolescents would spend between 200 and 600 hours to respond to an information request; thus, an average of 400 hours. The total estimated burden per company is based on the following assumptions:

Identify, obtain, and organize product information, prepare response:	25-150 hours
Identify, obtain, and organize information on marketing expenditures, prepare response:	50-200 hours <sup>7</sup>
Identify, obtain, and organize information on, and samples of, marketing activities, prepare response:	25-150 hours
Identify, obtain, and organize information regarding product nutrition information and healthy initiatives, prepare response:	20-50 hours
Identify, obtain, and organize information regarding market research and marketing to youth of a specific gender, race, ethnicity, or income level, prepare response:	20-50 hours
Total	140-600 hours

<sup>7</sup> For companies that use substantial amounts of unmeasured media for advertising and promotional activities, the hours required to respond will be greater than for companies that utilize only small amounts of unmeasured media.

The Commission intends to send information requests to approximately 25 parent companies that market a single category of product to children and adolescents. As a result, staff estimates a total burden for these companies of approximately 4,250 hours (25 companies x 170 average burden hours per company). The Commission intends to send information requests to approximately 20 parent companies that market multiple categories of products to children and adolescents. As a result, staff estimates a total burden for these companies of approximately 8,000 hours (20 companies x 400 average burden hours per company). Thus, cumulative estimated burden is 12,250 hours. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated

with the ultimate parent company that has received the information request.

### C. Estimated Cost Burden: \$3,675,000

It is difficult to calculate with precision the labor costs associated with the information requests, as the costs entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The FTC staff has assumed that professional personnel and outside legal counsel will handle most of the tasks involved in gathering and producing responsive information, and has applied an average hourly wage of \$300/hour for their labor. Thus, the staff estimates that the total labor costs for the information requests will be approximately \$3,675,000 (( $\$300 \times 4,250$  hours for companies that market a single category) + ( $\$300 \times 8,000$  hours for companies that market multiple categories)).

FTC staff estimates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

### III. Instructions For Submitting Comments

Interested parties are invited to submit written comments electronically or in paper form. All comments must be received on or before November 23, 2009. Comments should refer to "Food Industry Marketing to Children and Adolescents Study: Paperwork Comment; Project No. P094511" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (<http://www.ftc.gov/os/publiccomments.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include

any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ." as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>8</sup>

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comment in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-foodmarketingPRA>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the (<https://secure.commentworks.com/ftc-foodmarketingPRA>) weblink. If this Notice appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that (<http://www.regulations.gov>) forwards to it. You may also visit the FTC website at (<http://www.ftc.gov/>) to read the Notice and the news release describing it.

A comment filed in paper form should include the reference "Food Industry Marketing to Children and Adolescents Study: Paperwork Comment; Project No. P094511" both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to

<sup>8</sup>The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtml>). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtml>).

Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act, 15 U.S.C. § 46(b). Such information also would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(4). Moreover, under Section 21(c) of the FTC Act, 15 U.S.C. § 57b-2(c), a submitter who designates a submission as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute 6(f) material. Although materials covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (e.g., official requests by Congress, requests from other agencies for law enforcement purposes, and administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford protections to the submitter, such as advance notice to seek a protective order in litigation. See 15 U.S.C. § 57b-2; 16 CFR 4.9-4.11.

By direction of the Commission.

**Donald S. Clark**

*Secretary*

[FR Doc. E9-22670 Filed 9-18-09; 8:45 am]

BILLING CODE 6750-01-S

## GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2009-B3]

### Federal Management Regulation; Federal Real Property Report

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** In furtherance of Federal Management Regulation (FMR) Bulletin 2008-B7, this notice announces the release of the Fiscal Year (FY) 2008 edition of the Federal Real Property Report, which provides an overview of the U.S. Government's owned and leased real property as of September 30, 2008. The FY 2008 Federal Real Property Report is now available.

**DATES:** *Effective Date:* September 21, 2009.

**ADDRESSES:** The FY 2008 Federal Real Property Report is now available on the Internet at [http://www.gsa.gov/graphics/ogp/FY\\_2008\\_Real\\_Property\\_Report.pdf](http://www.gsa.gov/graphics/ogp/FY_2008_Real_Property_Report.pdf). A limited number of hard copies of the report can be obtained by contacting the Asset Management Division (MPA), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration ([stanley.langfeld@gsa.gov](mailto:stanley.langfeld@gsa.gov)).

Dated: September 14, 2009.

**Michael J. Robertson,**

*Associate Administrator, Office of Governmentwide Policy, Chief Acquisition Officer.*

### General Services Administration

[FMR Bulletin 2009-B3]

Real Property

TO: Heads of Federal Agencies.

SUBJECT: Federal Real Property Report.

1. *Purpose.* This bulletin announces the FY 2008 release of the Federal Real Property Report, an overview of the U.S. Government's owned and leased real property as of September 30, 2008.

2. *Expiration Date.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Background.*

(1) On February 4, 2004, the President issued Executive Order (EO) 13327, "Federal Real Property Asset Management," and established the Federal Real Property Council (FRPC) to oversee the Federal Government's asset

management planning process and to improve governmentwide real property performance. The EO requires the Administrator of General Services, in consultation with the FRPC, to develop and maintain a centralized inventory database, incorporating all key elements identified by the FRPC.

(2) The goals of the centralized database are to: (1) Improve decision making with more accurate and reliable data; (2) provide the ability to benchmark federal real property asset performance; and (3) centralize collection of key real property data elements into one federal inventory database. The Federal Real Property Profile (FRPP) system was re-engineered in FY 2005 and further enhanced in subsequent years to meet the FRPC's information technology requirements.

(3) The FY 2008 report marks the fourth reporting year for the governmentwide data elements designated by the FRPC as required by EO 13327. All executive branch agencies are required to submit constructed asset-level data to the FRPP on an annual basis. The FRPP is a secure, password-protected Web-based database that allows federal real property managers to update real property data online and in real time, perform historical benchmarking, produce ad hoc reports, measure performance of real property assets, and identify unneeded and underutilized assets for disposal. The Federal Real Property Report provides information regarding federal real property holdings.

4. *How to Obtain a Copy of the Federal Real Property Report.* The FY 2008 version of the Federal Real Property Report is posted on the GSA Web site at [http://www.gsa.gov/graphics/ogp/FY\\_2008\\_Real\\_Property\\_Report.pdf](http://www.gsa.gov/graphics/ogp/FY_2008_Real_Property_Report.pdf). A limited number of hard copies of the report can be obtained by contacting the Asset Management Division (MPA), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

5. *Further Information.* For further information, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), Office of Governmentwide Policy, General Services Administration, at (202) 501-1737, or [stanley.langfeld@gsa.gov](mailto:stanley.langfeld@gsa.gov).

[FR Doc. E9-22625 Filed 9-18-09; 8:45 am]

BILLING CODE 6820-RH-P

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**
**Centers for Disease Control and  
Prevention**

[30Day–09–09AS]

**Agency Forms Undergoing Paperwork  
Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Management Information System for Comprehensive Cancer Control Programs—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

CDC currently funds the National Comprehensive Cancer Control Program (NCCCP), which provides funding and technical support to all 50 states, the District of Columbia, seven tribes/tribal organizations, and seven territories/U.S. Pacific Island jurisdictions. The NCCCP was established to improve the integration and implementation of comprehensive cancer control (CCC) plans across funding and jurisdiction boundaries, and is an outgrowth of efforts involving CDC, the American Cancer Society, the National Cancer Institute, the American College of Surgeons, the North American Association of Central Cancer Registries, and public health leaders at the state and national levels.

All 65 NCCCP-funded programs are required to submit continuation applications and semi-annual progress reports describing performance plans and measures. To date, progress reports have been collected on templates that serve as a guide, but do not standardize the information to be collected. This non-standardized approach to progress reporting results in CCC program reports that vary in content and detail, and cannot be readily compiled to produce summary reports.

CDC proposes to implement a database-driven Management Information System (MIS) that will achieve two objectives. First, the MIS will provide an organized source of information about the activities and accomplishments of all funded NCCCP programs. Secondly, the electronic MIS will provide an efficient mechanism for generating state, regional, and national level summary reports.

Information reported through the MIS will be used by CDC to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate progress made in achieving program-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness.

OMB approval is requested for a three-year period. Information will be collected electronically twice per year. The initial burden per response is estimated to be six hours. After respondents have become experienced with entering data, and the amount of new data to be entered decreases, the burden per response is expected to decrease. The total estimated annualized burden hours are 780. There are no costs to respondents other than their time.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
NCCCP grantees .....	65	2	6

Dated: September 11, 2009.

**Maryam Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–22654 Filed 9–18–09; 8:45 am]

BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**
**Centers for Disease Control and  
Prevention**

[30Day–09–0571]

**Agency Forms Undergoing Paperwork  
Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Minimum Data Elements (MDEs) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) (OMB# 0920–0571 exp. 1/31/2010)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Congress established the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) in 1991

by enacting the Breast and Cervical Cancer Mortality Prevention Act of 1990. This legislation authorized the Centers for Disease Control and Prevention (CDC) to provide funding to states for the development and maintenance of early detection programs designed to ensure that underserved, low income, and under-insured women receive access to breast and cervical cancer screening services. Services provided through the NBCCEDP include clinical breast examinations, mammograms and Pap tests, timely and adequate diagnostic testing for abnormal results, and referrals to appropriate treatment. The NBCCEDP has operated for 19 years and currently funds 68 programs including all 50 states, five U.S. Territories, 12 American Indian/Alaska Native organizations and the District of Columbia.

NBCCEDP awardees collect patient-level screening and tracking data to manage the program and clinical services, and transmit a de-identified subset of data on patient demographics, screening tests and outcomes to CDC twice per year (Minimum Data Elements (MDEs) for the NBCCEDP, OMB No.

0920–0571, exp. 1/31/2010). CDC requests OMB approval to continue electronic information collection for three additional years.

CDC uses the MDEs to monitor and evaluate NBCCEDP awardees; improve the availability and quality of screening and diagnostic services for underserved

women; develop outreach strategies for women who are never or rarely screened for breast and cervical cancer; and report program results to Congress and other legislative authorities. There are no costs to respondents other than their time. The total estimated annualized burden hours are 544.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
NBCCEDP Grantees .....	68	2	4

Dated: September 11, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–22653 Filed 9–18–09; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–09–0222]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to CDC/ATSDR Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

#### Proposed Project

Questionnaire Design Research Laboratory (QDRL) 2010–2012, (OMB No. 0920–0222 exp. 2/28/2010)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data to support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

The Questionnaire Design Research Laboratory (QDRL) conducts questionnaire pre-testing and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey, OMB No. 0920–0214) and other Federally sponsored surveys. NCHS is requesting 3 years of OMB Clearance for the project.

The QDRL conducts cognitive interviews, focus groups, mini field-pretests, and experimental research in

laboratory and field settings, both for applied questionnaire evaluation and more basic research on response errors in surveys.

The most common questionnaire evaluation method is the cognitive interview. In a cognitive interview, a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of 10–15 interviews; ideally, the questionnaire is re-worked between rounds and revisions are tested iteratively until interviews yield relatively few new insights.

When possible, cognitive interviews are conducted in the survey's intended mode of administration. For example, when testing telephone survey questionnaires, participants often respond to the questions via a telephone in a laboratory room. Under this condition, the participant answers without face-to-face interaction. QDRL staff watch for response difficulties from an observation room, and then conduct a face-to-face debriefing with in-depth probes. Cognitive interviewing provides useful data on questionnaire performance at minimal cost and respondent burden.

Similar methodology has been adopted by other Federal agencies, as well as by academic and commercial survey organizations. There are no costs to respondents other than their time.

## ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Test Volunteers .....	500	1	1.25	625

Dated: September 14, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-22650 Filed 9-18-09; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-09-09CO]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

#### Proposed Project

Increasing Adoption of CROPS by Farmers and Manufacturers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

There was an average of 200 tractor-related fatalities annually between 1992 and 2005 in the U.S., with tractor overturns accounting for 1,412 of these deaths. The majority could have been prevented with the use of a rollover protective structure (ROPS). It is estimated that about half of the 4.8 million tractors in the United States currently do not have ROPS installed. Earlier research indicated that adoption of retrofit ROPS technology for older tractors is impeded by the costs, complexity of this modification, usability and storage of the tractor after the retrofitting (installation), of a ROPS. To overcome these barriers, NIOSH designed a prototype of a cost-effective roll over protective structure (CROPS). Projected retrofit costs for CROPS are \$800, compared to \$1,200–\$2,500 for ROPS; and the installation complexity is significantly reduced. NIOSH has CROPS prototype designs for five tractors: Ford 3000 series, Ford 4000 series, Ford 8N, Ford 4600 and Massey-Ferguson 135. However, this technology has not been transferred to the agricultural workplace, suggesting that

the barriers to adoption and implementation are much more complex than previously believed.

With the assistance of state partners, the project will identify the study population—farmers in two selected states who use tractors for which a CROPS prototype has been developed by NIOSH. From this group of farmers a subset of farmers from the study population will be selected (18 in each state for a total of 36) to receive a CROPS at no charge. Each farmer will be asked to install the CROPS and provide an initial assessment of their perception of the utility and value of the device and allow others to observe the retrofit process. New York and Virginia were selected as states because of their high number of tractor roll over fatalities and established relationships with NIOSH, its partners, and access to farming communities. The state partners will schedule and arrange 18 demonstration projects within their respective states for a total of 36 tractor retrofit demonstrations. Attendance at these events is anticipated to be demonstrators, observers, community leaders and fabricators. It is anticipated to have a minimum of 10 attendees identified and secured for each of the 36 demonstration projects. These attendees will be invited to observe installation of CROPS in the field and queried on their perception of the utility and value of the design. This will help identify barriers from and approaches for stimulating farmers to retrofit their tractors with Cost-Effective Roll-Over Protection Structures (CROPS) using stakeholder input.

There is no cost to respondents other than their time.

## ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Farmer demonstrators of retrofitting CROPS .....	36	3	15/60	27
Observers of CROPS demonstration .....	364	3	15/60	273
<b>Total .....</b>				<b>300</b>

Dated: September 14, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-22648 Filed 9-18-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-09-09AD]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 or send comments to CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should

be received within 60 days of this notice.

#### Proposed Project

Evaluation of the Field Triage Decision Scheme: The National Trauma Triage Protocol—New—Division of Injury Response (DIR), National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The Field Triage Decision Scheme: The National Trauma Triage Protocol educational initiative was developed to help emergency medical services (EMS) professionals (administrators, medical directors, trauma system leadership, and providers) learn about and implement the revised Field Triage Decision Scheme. The Decision Scheme is intended to be the foundation for the development of local and regional field triage protocols.

In the United States, injury is the leading cause of death for persons aged 1-44 years. EMS professionals have a substantial impact on care of the injured and on public health. At an injury scene, EMS professionals determine the severity of injury, initiate medical management, and identify the most appropriate facility to which the patient should be transported. This destination decision is made through a process called field triage. Certain hospitals have additional expertise, resources, and equipment to treat severely injured patients. These facilities are known as trauma centers and are classified from Level I to Level IV. The risk for death of a severely injured person is 25% lower if the patient receives care at a Level I trauma center. However, not all patients require the services of a Level I trauma center; proper triage will ensure that patients who are injured less severely will be transported to a closer emergency department that is capable of managing their injuries.

In an effort to encourage use of improved triage procedures, CDC's National Center for Injury Prevention and Control (NCIPC) worked with experts and partner organizations to develop the 2006 Field Triage Decision Scheme. In support of the 2006 Field Triage Decision Scheme, NCIPC developed a multi-media toolkit aimed at EMS professionals. The toolkit includes *A Guide to the Field Triage Decision Scheme: The National Trauma Triage Protocol*, a poster, CD-ROM, and pocket card to help EMS providers, planners, and administrators effectively train others and use the Decision Scheme criteria within their own systems.

After the national distribution, NCIPC will conduct an online survey of EMS professionals who have received a toolkit to assess the short-term impact of the communication initiative directed at EMS professionals about field triage procedures. Specifically, the survey will assess how many EMS professionals who received a copy of the Decision Scheme are using it, how EMS professionals have used the Decision Scheme and accompanying toolkit materials, how the materials have been used to educate others, what EMS professionals learned from the materials, and how the Decision Scheme changed EMS professional's triage practices. Survey results will be used to identify the impact and applicability of the Decision Scheme and toolkit materials for EMS professionals.

NCIPC will also conduct focus groups with a segment of the survey respondents in order to have them elaborate on data submitted through the survey. These group interviews will focus on the extent the Decision Scheme is being used, how it is being implemented, self-reported changes in knowledge, and perceived impact on treatment of trauma patients. There are no costs to respondents other than their time.

#### ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
EMS professionals .....	Online survey .....	3,000	1	15/60	750
	Screening and Recruitment for Focus Groups.	48	1	5/60	4
	Focus Groups .....	64	1	1	64
Total .....	.....	.....	.....	.....	818

Dated: September 14, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-22646 Filed 9-18-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-D-0514]

#### Guidance for Industry on End-of-Phase 2A Meetings; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "End-of-Phase 2A Meetings." This guidance provides information on end-of-phase 2A (EOP2A) meetings for sponsors of investigational new drug applications (INDs). The purpose of an EOP2A meeting is to facilitate interaction between FDA and sponsors who seek guidance related to clinical trial design employing clinical trial simulation and quantitative modeling of prior knowledge (e.g., drug, disease, placebo), designing trials for better dose response estimation and dose selection, and other related issues. This guidance is intended to further FDA initiatives directed at identifying opportunities to facilitate the development of innovative medical products and improve the quality of drug applications through early meetings with sponsors.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jogarao Gobburu, Center for Drug

Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3186, Silver Spring, MD 20993-0002, 301-796-2460.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of a guidance for industry entitled "End-of-Phase 2A Meetings." This guidance will meet one of the performance goals agreed to under the September 27, 2007, reauthorization of the Prescription Drug User Fee Act (PDUFA IV). Under section XI of the PDUFA IV Performance Goals, Expediting Drug Development, FDA agreed to publish by the end of fiscal year 2008 a draft guidance on EOP2A meetings and to complete the final guidance within 1 year of the close of the public comment period (*see* <http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119243.htm> at section XI.A).

FDA has a long-standing interest in defining dose or exposure-response relationships for the effectiveness and safety of new drugs. Accurate dose-response information is important for understanding how patients should take drugs to maximize desirable effects and minimize undesirable effects. Dose selection for phase 2 and phase 3 studies is a challenge in many drug development programs and poor choice may lead to trial failure. Improving early dose selection may increase the likelihood of future trial success. FDA recognizes trial planning may be improved by clinical trial simulations that employ quantitative models of drug exposure-response, placebo effect, and disease progression. This guidance on EOP2A meetings is intended to encourage the best use of this science to facilitate the exploration of trial design alternatives to increase the likelihood for successful trials.

In the **Federal Register** of September 26, 2008 (73 FR 55851), FDA announced the availability of a draft guidance of the same title. In response to public comments on the draft version, the guidance has been revised to clarify the following topics: (1) The type of information that should be submitted with the meeting request and the background package and (2) the role of the Office of New Drugs in preparing for and conducting EOP2A meetings.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the roles of model-based drug development together with early interaction between FDA and industry to improve late phase clinical

trial success. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

##### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

##### III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 312 and the guidance on "Formal Meetings with Sponsors and Applicants for PDUFA Products" have been approved under OMB control numbers 0910-0014 and 0910-0429, respectively.

##### IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: September 16, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9-22623 Filed 9-18-09; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Childhood Obesity ARRA CR.

*Date:* October 2, 2009.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892. 301-435-4514. [jerkins@csr.nih.gov](mailto:jerkins@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Arthritis, Connective Tissue and Skin (ACTS), Small Business Applications.

*Date:* October 7, 2009.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301-594-6376. [ansaria@csr.nih.gov](mailto:ansaria@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-22587 Filed 9-18-09; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PCMB Member SEP.

*Date:* September 30, 2009.

*Time:* 9 a.m. to 10 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435-4511, [whitmarshb@csr.nih.gov](mailto:whitmarshb@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: GMPB.

*Date:* October 2, 2009.

*Time:* 12 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301-435-1169, [greenwep@csr.nih.gov](mailto:greenwep@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-22435 Filed 9-18-09; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Docket Number NIOSH-187]

#### Proposed Enhancements to Occupational Health Surveillance Data Collection Through the Healthcare Personnel Safety (HPS) Component of the National Healthcare Safety Network (NHSN)

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of public meeting and availability for public comment.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting and request for public comment on proposed enhancements to occupational health surveillance data collection through the Healthcare Personnel Safety (HPS) Component of the National Healthcare Safety Network (NHSN).

*Public Comment Period:* Comments must be received by October 21, 2009.

*Public Meeting Date and Time:* November 16, 2009, 1 p.m.-5 p.m. and November 17, 2009, 8 a.m.-5 p.m.

*Place:* Sheraton Cincinnati Airport Hotel, 2826 Terminal Drive, Hebron, Kentucky 41048, (859) 371-6166.

*Purpose of Meeting:* To obtain public comment on the content and conduct of enhancements to occupational health surveillance data collection through the Healthcare Personnel Safety (HPS) Component of the National Healthcare Safety Network (NHSN). Special emphasis will be placed on discussion of the content of the data collection forms.

*Status:* The forum will include scientists and representatives from industry, labor, and other stakeholders, and is open to the public. Attendance is limited only by the space available. The meeting room will accommodate approximately 60 people. Interested parties should contact Ahmed Gomaa at [agomaa@cdc.gov](mailto:agomaa@cdc.gov) or (513) 841-4337, or

Sara Luckhaupt at [sluckhaupt@cdc.gov](mailto:sluckhaupt@cdc.gov) or (513) 841-4123 for information about how to register for the meeting.

**ADDRESSES:** Oral comments given at the meeting will be recorded and included in the NIOSH-187 docket. You may submit comments, identified by docket number NIOSH-187, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533-8285.
- *E-mail:* [nioshdocket@cdc.gov](mailto:nioshdocket@cdc.gov).

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at <http://www.cdc.gov/niosh/docket>, and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

*Background:* The NHSN is an Internet-based surveillance system established in 2005 by the CDC Division of Healthcare Quality Promotion (DHQP) that includes both patient safety and healthcare personnel health and safety modules. The proposed enhancement to the NHSN will electronically link and integrate a wide variety of ongoing occupational health surveillance activities and facilitate more accurate and timely prevention strategies, while meeting necessary confidentiality and security requirements.

This project focuses on surveillance and prevention of four occupational health outcomes among healthcare workers: (1) Traumatic injuries in the workplace (specifically: (a) musculoskeletal disorders due to patient handling and working in awkward postures, (b) slips, trips, and falls, and (c) workplace violence); (2) dermatitis due to workplace exposures; (3) work-related asthma; and (4) airborne transmission of tuberculosis in the workplace. Once these enhancements to NHSN are successfully implemented, additional occupational health metrics can be added to the system to address emerging problems such as pandemic influenza.

The success of this project will depend on the participation of healthcare facilities in the surveillance system. Because the stakeholders themselves will be the central users of our proposed additions to NHSN, they

will be extensively involved in every stage of this project—including initial development, implementation, and evaluation of the new module and event forms. This meeting will provide an opportunity for stakeholders to contribute to the initial development of the data collection forms.

**FOR FURTHER INFORMATION CONTACT:**

Ahmed Gomaa, Robert A. Taft Laboratories, MS-R17, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 841-4337, or Sara Luckhaupt, same address, telephone (513) 841-4123.

*References:* National Healthcare Safety Network (NHSN)—<http://www.cdc.gov/nhsn/index.html>. Healthcare Personnel Safety Component—<http://www.cdc.gov/nhsn/hps.html>.

Dated: September 14, 2009.

**Tanja Popovic,**

*Chief Science Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-22656 Filed 9-18-09; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Patient Safety Organizations: A Compliance Self-Assessment Guide

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of Availability—Patient Safety Organizations: A Compliance Self-Assessment Guide.

**SUMMARY:** AHRQ is announcing the availability of a document entitled: “Patient Safety Organizations: A Compliance Self-Assessment Guide.” The Patient Safety and Quality Improvement Act of 2005, Public Law 109-41, 42 U.S.C. 299-b21—b-26 (Patient Safety Act) provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) (42 CFR part 3) authorizes AHRQ, on behalf of the Secretary of HHS, to: list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing; and request additional information and conduct reviews (including announced or unannounced site visits) to assess PSO compliance. To assist PSOs in making the required attestations and preparing for a

compliance review, AHRQ developed the sample questions in this guide to encourage each PSO to take a thorough and systematic approach to compliance. The guide recognizes that each PSO’s approach to compliance may be different based upon the specific mission it has chosen, the specific activities and expertise it offers to healthcare providers, and its size and mode of operation. Thus, these questions are merely illustrative; some questions will not be applicable or even appropriate for every PSO. The guide does not establish new standards or requirements beyond those that are established by the Patient Safety Rule.

**DATES:** Availability of resource.

**ADDRESSES:** “Patient Safety Organizations: A Compliance Self-Assessment Guide” can be accessed electronically at the following HHS Web site: <http://www.pso.ahrq.gov/index.html>.

**FOR FURTHER INFORMATION CONTACT:**

Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403-3697; Telephone (local): (301) 427 1111; TTY (toll free): (866) 438-7231; TTY (local): (301) 427-1130; E-mail: [psa@ahrq.hhs.gov](mailto:psa@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Patient Safety Act establishes a framework by which healthcare providers can report information voluntarily to PSOs, on a privileged and confidential basis, for the aggregation and analysis of patient safety events and quality concerns. A PSO is an entity listed by the Secretary of HHS, which has a primary focus to conduct activities to improve patient safety and the quality of healthcare delivery.

The requirements governing PSOs are set forth in subpart B of the Patient Safety Rule. These include: the requirements that an entity must meet to become, and remain listed, as a PSO; the procedures and processes for assessing an entity’s eligibility; the processes for ensuring a PSO’s compliance with the requirements of the Patient Safety Rule, and for correcting deficiencies in a PSO’s compliance; and the process by which a PSO can voluntarily relinquish its listing or, in the case of a PSO that does not correct one or more deficiencies, the process for delisting a PSO for cause. Within the framework established by the Patient Safety Act, PSOs are a source of expert advice for providers, and PSOs enable providers to take advantage of the potential for significant aggregation of patient safety

events within the protections of the Patient Safety Act and Patient Safety Rule. As a result, healthcare providers, and those committed to improving the safety and quality of patient care, have a strong interest in the integrity of PSOs and their ability to carry out this statutory mission.

AHRQ administers the provisions of the Patient Safety Rule relating to listing and operation of PSOs, which are the focus of this guide. The HHS Office for Civil Rights is responsible for enforcing the confidentiality protections of the Patient Safety Act and Patient Safety Rule.

For an entity to be listed, and remain listed, as a PSO, the Patient Safety Rule relies primarily upon a system of attestations. An entity seeking listing for a three-year period as a PSO must submit to AHRQ a form, Certification for Initial Listing, to attest that it meets the Patient Safety Rule's eligibility and listing requirements at the time the entity submits its certifications. During its period of listing, a PSO must submit a form, Two Bona Fide Contract Requirement, every two years attesting that it has at least two contracts with different providers. If the PSO has other relationships, specified in section 3.102(d)(2), with any contracting provider, it must also submit the form, PSO Disclosure Statement, regarding its relationships with the provider and attest to the completeness and accuracy of its disclosures. Finally, a PSO must submit the form, Certification for Continued Listing, to seek continued listing for an additional three-year period and attest that it meets the requirements for continued listing. This process places the burden for understanding and complying with the Patient Safety Rule on the PSO.

The Patient Safety Rule also authorizes AHRQ to assess or verify PSO compliance with the rule's requirements at any time through requests for information or by conducting announced or unannounced reviews of, or site visits to, PSOs (section 3.110). In addition to routine compliance reviews, AHRQ may also conduct site visits or request additional information if, for example, AHRQ becomes aware that a PSO is not in compliance with the requirements of the statute or the Patient Safety Rule.

The Patient Safety Rule provides PSOs latitude in complying with its requirements. In part, this reflects a recognition that PSOs will vary in terms of size, complexity, and sophistication and, over time, PSOs will vary significantly in the breadth and scope of their activities. For example, PSOs can be local, regional, or national in

orientation; they can focus narrowly or broadly in terms of the clinical or analytic services they offer providers; they can target their services toward one type of healthcare facility or multiple healthcare settings; and, they are likely to vary in the sophistication and complexity of information technology employed.

Each PSO will need to develop its approach to compliance by taking into account the specific mission it has chosen for itself, the specific activities and expertise it offers to healthcare providers, and its size and mode of operation. As a consequence, AHRQ developed this self-assessment guide recognizing that individual PSOs are likely to approach compliance from different perspectives. Thus, the guide does not propose a uniform approach to compliance. Instead, the guide presents sample questions—some of which may not be applicable or appropriate to a specific PSO—to encourage each PSO to take a comprehensive and systematic approach to compliance that best meets its circumstances.

The questions in the guide do not establish new standards or requirements; they are only presented for an illustrative purpose. If there is any inadvertent discrepancy between the text of the guide and the Patient Safety Rule, PSOs should consider the text of the rule as authoritative.

More information on the "Patient Safety Organizations: A Compliance Self Assessment Guide" and PSOs can be obtained through AHRQ's PSO Web site: <http://www.pso.ahrq.gov/index.html>.

Dated: September 11, 2009.

**Carolyn M. Clancy,**

Director.

[FR Doc. E9-22594 Filed 9-18-09; 8:45 am]

BILLING CODE 4160-90-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2009-N-0441]

#### Promotion of Food and Drug Administration-Regulated Medical Products Using the Internet and Social Media Tools; Notice of Public Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing; request for comments.

**SUMMARY:** The Food and Drug Administration's (FDA's) Center for Drug Evaluation and Research (CDER), in collaboration with FDA's Center for

Biologics Evaluation and Research (CBER), Center for Veterinary Medicine (CVM), and Center for Devices and Radiological Health (CDRH), is announcing a public hearing to discuss issues related to the promotion of FDA-regulated medical products (including prescription drugs for humans and animals, prescription biologics, and medical devices) using the Internet and social media tools. FDA is seeking participation in the public hearing and written comments from all interested parties, including, but not limited to, consumers, patients, caregivers, health care professionals, patient groups, Internet vendors, advertising agencies, and the regulated industry. This meeting and the written comments are intended to help guide FDA in making policy decisions on the promotion of human and animal prescription drugs and biologics and medical devices using the Internet and social media tools. FDA is seeking input on a number of specific questions but is interested in any other pertinent information participants in the hearing would like to share.

**Dates and Times:** The public hearing will be held on November 12 and 13, 2009, from 8 a.m. to 5 p.m. each day. Submit written or electronic registration by close of business on October 9, 2009. Written and electronic comments will be accepted until February 28, 2010.

**Location:** The public hearing will be held at the National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594, 202-314-6305; Metro: L'Enfant Plaza station on the yellow, green, orange, and blue lines; see: <http://ntsb.gov/events/newlocation.htm>. (FDA has verified the Web site address, but FDA is not responsible for any changes to the Web site after this document publishes in the **Federal Register**.)

**ADDRESSES:** Submit written registration and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit electronic registration and electronic comments, identified with the docket number found in brackets in the heading of this document, to <http://www.regulations.gov>.

Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at <http://www.regulations.gov> approximately 30 days after the hearing (see section VI of this document).

**Registration to Attend and/or to Participate in the Meeting:** Seating at the hearing is limited. People interested in attending should submit written or electronic registration as specified above

(see **ADDRESSES**) by close of business on October 9, 2009. Registration is free and will be accepted on a first-come, first-served basis. Written or electronic comments will be accepted until February 28, 2010.

The procedures governing the hearing are found in 21 CFR part 15 (see section IV of this document). If you wish to make an oral presentation at the hearing, you must state your intention on your registration submission (see **ADDRESSES**). To speak, submit your name, title, business affiliation, addresses, telephone and fax numbers, and e-mail address. FDA has included questions for comment in section III of this document. You should also identify by number each question you wish to address in your presentation and the approximate time requested. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests should consolidate or coordinate their presentations and request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. Once FDA notifies registered participants of their scheduled times, presenters should submit to FDA two copies of each presentation to be given (see **FOR FURTHER INFORMATION CONTACT**).

If you need special accommodations because of a disability, please inform Jean-Ah Kang (see **FOR FURTHER INFORMATION CONTACT**) at the time of registration.

**FOR FURTHER INFORMATION CONTACT:** Jean-Ah Kang, Division of Drug Marketing, Advertising, and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3270, Silver Spring, MD, 20993-0002, 301-796-4269, FAX: 301-796-8444, e-mail: [InternetPublicMeeting@fda.hhs.gov](mailto:InternetPublicMeeting@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Internet has become a widely used medium for companies, including manufacturers, packers, or distributors of medical products regulated by FDA, to disseminate information about their products. The Internet's ability to facilitate communication, information sharing, information exchange between systems, user-centered design, and collaboration has also evolved as a result of the second generation of Web development and Web design, or "Web 2.0." Web 2.0 has led to the emergence of a variety of social media tools (i.e., Web properties whose online content is

primarily created and published by users rather than the property owners).

The continually evolving nature of the Internet, including Web 2.0 and social media tools, as well as their expansion to applications such as mobile technology, have raised questions and concerns over how to apply existing regulations to promotion in these newer media. FDA is evaluating how the statutory provisions, regulations, and policies concerning advertising and promotional labeling should be applied to product-related information on the Internet and newer technologies. Although the agency believes that many issues can be addressed through existing FDA regulations, special characteristics of Web 2.0 and other emerging technologies may require the agency to provide additional guidance to the industry on how the regulations should be applied.

##### **A. Regulation of Advertising and Labeling**

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA has responsibility for regulating the labeling of prescription drugs and medical devices and the advertising of prescription drugs and restricted medical devices. If an activity or material is considered to be either advertising or labeling, it must meet certain requirements.

Under section 201(m) of the act (21 U.S.C. 321(m)), labeling is defined as "all labels and other written, printed, or graphic" materials "upon" or "accompanying" an article. The term "accompanying" has been broadly defined by the Supreme Court (*Kordel v. United States*, 335 U.S. 345, 349-350 (1948)). FDA's regulations give examples of labeling materials, including brochures, mailing pieces, detailing pieces, calendars, price lists, letters, motion picture films, and sound recordings (§ 202.1(l)(2) (21 CFR 202.1(l)(2))).

FDA regulates the labeling of all drugs and devices under its jurisdiction. Labeling must be truthful and nonmisleading (section 502(a) of the act (21 U.S.C. 352(a))).

FDA also regulates the advertising for prescription drugs and biologics. Although the act does not define what constitutes an "advertisement," FDA generally interprets the term to include information (other than labeling) that is issued by, or on behalf of, a manufacturer, packer, or distributor and is intended to promote a product. This includes, for example, "advertisements in published journals, magazines, other periodicals, and newspapers, and advertisements broadcast through media

such as radio, television, and telephone communication systems" (§ 202.1(l)(1)). According to the act (section 502(n)), a prescription drug is misbranded if its advertising does not include, in addition to the product's established name and quantitative composition, a "true statement" of information in brief summary "relating to side effects, contraindications and effectiveness" of the advertised product. For prescription drug advertisements, FDA's implementing regulations (21 CFR part 202) specify that, among other things, the statutory requirement of a "true statement" is not satisfied if an advertisement is false or misleading with respect to side effects, contraindications or effectiveness or if it fails to reveal material facts about "consequences that may result from the use of the drug as recommended or suggested in the advertisement" (§ 202.1(e)(5)). The prescription drug regulations also specify that advertisements must "present a fair balance between information relating to side effects and contraindications and information relating to effectiveness of the drug," which is achieved when "the presentation of true information relating to side effects and contraindications is comparable in depth and detail with the claims for effectiveness or safety" (§ 202.1(e)(5)(ii)).

FDA similarly regulates advertising for restricted devices. A "restricted device" is a device that may be restricted to sale, distribution, or use only with the written or oral authorization of a licensed practitioner, or in accordance with other conditions if FDA determines that there cannot otherwise be reasonable assurance of its safety and effectiveness (21 U.S.C. 360j(e)). FDA also restricts devices through the approval orders granted to many class III devices (21 U.S.C. 360e(d)(1)(B)(ii)). According to the act, a restricted device is misbranded if its advertising is false or misleading in any particular (section 502(q) of the act), or if its advertising does not contain a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications (section 502(r) of the act). There are currently no regulations establishing specific requirements for the content and format of advertisements for restricted devices.

Although FDA has not comprehensively addressed when Internet promotion of prescription drugs and medical devices is labeling versus advertising, the agency has jurisdiction over all prescription drug and biologic product promotion as well as all restricted device advertising and all

device promotional labeling when conducted by or on behalf of a manufacturer, packer, or distributor. There are no regulations that specifically address Internet promotion separately from the other types of promotion discussed above, nor are there any regulations that prohibit the use of certain types of media to promote drugs and medical devices. Although no rule has specifically addressed Internet promotion, it is fairly clear that some promotional efforts are substantially similar in presentation and content to promotional materials in other media or publications. At the same time, FDA recognizes that the Internet possesses certain unique technological features and that some online tools that may be used for promotion offer novel presentation and content features. Another emerging issue involves the reporting of adverse event data because such information may initially be revealed using social media platforms in the context of Internet promotion for FDA-regulated medical products.

#### B. 1996 Meeting on Promotion of FDA-Regulated Products on the Internet

On October 16 and 17, 1996, FDA held a public meeting to discuss issues related to the promotion of FDA-regulated medical products on the Internet (see 61 FR 48707, September 16, 1996). The agency's objective was to receive broad public input and to hear various points of view and opinions on Internet issues from a discussion among interested persons. A discussion group format was used and covered the following topics: Investigational product information, chatrooms and newsgroups, and Web site links. A transcript of the meeting is available at <http://www.fda.gov/AboutFDA/CentersOffices/CDER/ucm175775.htm>.)

#### C. New Internet Tools and Technology

Since the 1996 public meeting, there has been a massive expansion of new tools and technologies, such as blogs, microblogs, podcasts, social network sites ("social networks") and online communities, video sharing, widgets, and wikis, which are defined as follows:<sup>1,2</sup>

- **Blogs** (e.g., *Blogger*, *WordPress*, *TypePad*): Blogs are Web sites with regular updates (in reverse chronological order—newest update at the top) that typically combine text,

images (graphics or video), and links to other Web pages. Blogs are usually informal and take on the tone of a diary or journal entry. Some blogs are very personal, while others provide mainstream news updates. Most blogs encourage dialogue by allowing their readers to leave comments.

- **Microblogs** (e.g., *Twitter*): Microblogs are comprised of extremely short written blog posts, similar to text messages, and provide real-time updates. Twitter is an example of a popular microblog service that lets users broadcast short messages up to 140 characters long ("tweets") using computers or mobile phones.

- **Podcasts** (e.g., *audio sharing*): Podcasts (a blend of the terms "iPod" and "broadcast") are audio or video files that users can listen to or watch on computers or on a variety of portable media devices (like an iPod, Zune, and certain cell phones). Podcasts are usually short and often free, and users can arrange via subscription to receive new podcasts automatically via their computers or other media devices.

- **Social networks and online communities** (e.g., *Facebook*, *MySpace*, *LinkedIn*, *Friendster*, *Sermo*): Social networks and online communities give users opportunities to connect with or provide resources to clients, colleagues, family, and friends who share common interests. In many social networks, users create profiles and then invite people to join as "friends." There are many different types of social networks and online communities, many of which are free, and they range from general to those tailored for a specific demographic or interest area.

- **Video sharing** (e.g., *YouTube*, *Blip.tv*, *Vimeo*): Also called a "video hosting service," video sharing allows individuals to upload video clips to an Internet Web site. The video host will then store the video on its server and show the individual different types of code to allow others to view or comment on the video.

- **Widgets**: Supposedly short for "window gadget," a widget is a graphic control on a Web page that allows the user to interact with it in some way. Widgets can also be easily posted on multiple Web sites, have the added benefit of hosting "live" content, and often take the form of on-screen tools (clocks, event countdowns, auction-tickers, stock market tickers, flight arrival information, daily weather, etc.).

- **Wikis** (e.g., *Wikipedia*, *Medpedia*): The term "wiki" comes from the Hawaiian word for "fast." Wiki technology creates a Web page that anyone with access can modify—quickly and easily. A wiki can be either

open or closed, depending on the preferences of the community using it. An open wiki allows anybody to make changes and view content. A closed wiki allows only community members to make changes and view its content. Some wikis allow anyone to view content but only members to edit the content.

As the use of social media tools on the Internet has proliferated, the agency has engaged in a fact-finding process by communicating with companies, third-party providers, trade associations, and other groups to gain a better understanding of the nature of, and the technical aspects to, promotion of FDA-regulated medical products using these tools. FDA appreciates the time and effort that these individuals, companies, and associations have invested in assisting the agency in understanding the challenges and issues involved with Internet promotion using these newer Web 2.0 technologies.

## II. Purpose and Scope of the Hearing

This hearing is intended to provide an opportunity for broad public participation and comment concerning Internet promotion of FDA-regulated medical products, including human and animal prescription drugs and biologics and medical devices. Please note that this hearing does not address nonprescription drug promotion. FDA is particularly interested in hearing views from the public as to how expanding Web 2.0 technologies may be used to promote medical products to both health care professionals and consumers in a truthful, nonmisleading, and balanced manner. In addition, FDA is seeking public comment on Internet adverse event reporting.

## III. Issues for Discussion

Questions have arisen regarding the application of the prescription drug and device advertising and labeling provisions, regulations, and policies of promotion on the Internet, especially with regard to the use of emerging technologies such as blogs, microblogs, podcasts, social networks and online communities, video sharing, widgets, and wikis. This section briefly discusses the issues the agency has identified as most frequently raised by regulated companies and other interested parties. It should be noted that although a question may raise a particular issue, that does not necessarily mean that the agency will issue guidance or a regulation on that issue.

The agency invites comment at the public hearing on the general concept of Internet promotion, positive or negative; on any aspect of Internet promotion that

<sup>1</sup> Adapted from <http://newmedia.hhs.gov/socialmedia101.html> Social Media 101 Overview: The WHAT and the WHY. Accessed on August 14, 2009.

<sup>2</sup> Adapted from [http://www.usa.gov/webcontent/technology/other\\_tech.shtml](http://www.usa.gov/webcontent/technology/other_tech.shtml) Social Media and Web 2.0 in Government. Accessed on August 14, 2009.

is of interest to the presenter; and on the topics outlined in the following paragraphs. We are specifically interested in data and research on the use of social media tools in promotion, including data from companies on their own experiences, the extent to which health care professionals and consumers are using and are influenced by various social media tools, and the impact of Internet and social media promotion on the public health.

1. For what online communications are manufacturers, packers, or distributors accountable?

FDA regulates promotion of medical products that is conducted by or on behalf of a manufacturer, packer, or distributor. In determining whether a manufacturer, packer, or distributor is accountable for a communication about its product(s), the agency considers whether the manufacturer, packer, or distributor or anyone acting on behalf of the manufacturer, packer, or distributor, such as an ad agency, created the promotional communication. In addition, the agency considers whether the manufacturer, packer, or distributor or anyone acting on behalf of the manufacturer, packer, or distributor is influencing or controlling the promotional activity or communication in whole or in part.

Manufacturers, packers, and distributors may have a variety of options for how much control they exert over activities on the Internet, regardless of whether the promotional activity occurs on company-sponsored venues or on third-party venues. For example, in setting up a program about its product(s) through a chatroom, a manufacturer, packer, or distributor may allow comments to be posted in real time with no editing or review by the manufacturer, packer, or distributor; alternatively, the manufacturer, packer, or distributor may have the option of reviewing and editing comments before they are posted. Furthermore, the manufacturer, packer, or distributor may have control over the length of time comments are visible. As a result, information may be available to a much broader audience than originally engaged in the communication or program if the comments/entries are posted for an indefinite period of time ("archived materials"). Similarly, a manufacturer, packer, or distributor posting a video on a video-sharing site such as YouTube may choose whether or not to allow viewers to post comments.

In addition, various Web sites and tools can allow manufacturers, packers, or distributors to prompt others to

communicate about their products. For example, a manufacturer, packer, or distributor may ask or otherwise encourage users to post their own videos about its product(s) on sites such as YouTube. A manufacturer, packer, or distributor may also send out packets of information to prominent bloggers with the aim of prompting the blogger to write about its product(s). Alternatively, a manufacturer, packer, or distributor may create an online community for patients or health care professionals to discuss disease states, which may prompt discussion about the manufacturer's, distributor's, or packer's product(s). The agency is interested in hearing the views of the public on the following topics:

- What parameters or criteria should be applied to determine when third-party communications occurring on the Internet and through social media technologies are subject to substantive influence by companies that market products related to the communication or discussion?
- In particular, when should third-party discussions be treated as being performed by, or on behalf of, the companies that market the product, as opposed to being performed independent of the influence of the companies marketing the products?
- How should companies disclose their involvement or influence over discussions or material, particularly discussions or material on third-party sites?
- Are there different considerations that should be weighed depending on the specific social media platform that is used or based on the intended audience? If so, what are these considerations?
- With regard to the potential for company communications to be altered by third parties, what is the experience to date with respect to the unauthorized dissemination of modified product information (originally created by a company) by noncompany users of the Internet?

2. How can manufacturers, packers, or distributors fulfill regulatory requirements (e.g., fair balance, disclosure of indication and risk information, postmarketing submission requirements) in their Internet and social media promotion, particularly when using tools that are associated with space limitations and tools that allow for real-time communications (e.g., microblogs, mobile technology)?

FDA's regulations require that any promotional communications that make claims about a company's product include certain required disclosures,

such as the indicated use of the product and the risks associated with the use of the product (note that "reminder" promotion, which calls attention to the name of a product but does not make any representations or suggestions about the product, is exempt from these disclosure requirements (see 21 CFR 200.200, 201.100(f), 201.105(d)(2), 202.1(e)(2)(i), 801.109(d)). The prescription drug regulations also require that drug advertisements present a fair balance between information relating to risk and information relating to benefit (§ 202.1(e)(5)(ii)). They also specify that risk information must be presented with a prominence and readability reasonably comparable to claims about drug benefits (§ 202.1(e)(7)(viii)). Furthermore, for advertisements to be truthful and nonmisleading, they must contain risk information in each part as necessary to qualify any representations and/or suggestions made in that part about the drug (§ 202.1(e)(3)(i)). Similarly, section 502(r) of the act requires a "brief statement" of intended use and relevant risk information for restricted device advertising. In addition, section 201(n) of the act provides that a determination of whether product advertising or labeling is misleading relies in part on the extent to which labeling or advertising reveals facts material with respect to possible consequences of the use of the products as represented in the labeling or advertising material. Except for medical device applicants, applicants are also responsible for submitting copies of promotional materials to FDA (see, e.g., §§ 314.81(b)(3)(i), 314.550, 314.640, 514.80(b)(5)(ii), 601.12(f)(4), 601.45, and 601.94 (21 CFR 314.81(b)(3)(i), 314.550, 314.640, 514.80(b)(5)(ii), 601.12(f)(4), 601.45, and 601.94)).

- How should product information be presented using various social media tools to ensure that the user has access to a balanced presentation of both risks and benefits of medical products?

- Are there data to support conclusions about whether different types or formats of presentations have a positive or negative impact on the public health?

- Are there proposed solutions that may help address regulatory concerns when using social media tools associated with space limitations or tools that allow for real-time communications to present product information?

- How should companies address the potential volume of information shared on various social media sites with regard to real-time information that is continuously posted and regulatory

requirements to submit promotional materials to FDA as applicable (see, e.g., §§ 314.81(b)(3)(i), 314.550, 314.640, 314.80(b)(5)(ii), 601.12(f)(4), 601.45, and 601.94)?

3. What parameters should apply to the posting of corrective information on Web sites controlled by third parties?

Some manufacturers, packers, or distributors have expressed a desire to correct what are, in their belief, misconceptions or misinformation about their products, including unapproved uses of their products that are being conveyed on a Web site outside their control, such as on a blog, social networking site, or a wiki Web site (i.e., Wikipedia). Other companies have stated that they have not corrected what they believe is misinformation in the belief that they could be viewed by such an action as being responsible for all the information on the target Web site rather than just the information that they post or submit.

- The agency is interested in any data or research on how companies have approached these issues.
- Are there any parameters or criteria that could be used to determine the appropriateness of correcting misinformation and/or scope of information a company can provide when trying to correct misinformation on a Web site outside a company's control?
- Should the parameters differentiate with regard to the prominence of the third-party site (i.e., readership), its intended audience (e.g., general public, health care professionals, patients), its intended purpose (e.g., personal diary, encyclopedia-type reference), and/or the author of the information on the site?

4. When is the use of links appropriate?

The Internet allows users to move easily between Web sites or sources that provide information on many related topics. Under the act, companies are prohibited from promoting approved human and animal drugs, biologics, and medical devices for unapproved uses. However, sponsors sometimes provide links from their branded (e.g., mentions a product) Web sites to other informational sources about diseases, such as support groups, some of which may contain information about unapproved disease conditions or unapproved uses of approved products. Furthermore, some companies are using unbranded (e.g., does not mention a product) uniform resource locators (URLs) that, when clicked on, take users directly to branded information.

- The agency is interested in any comments about the appropriateness of

various techniques regarding the use of links (including between various social media tools) and data or research about whether or not users find these approaches to be misleading.

- Should parameters be established for links to and from Web sites?
- In addition, the agency is interested in any data or research concerning the frequency with which users actually click on different categories of links (e.g., banner ads, links within Web sites, sponsored links, organic search result links) to get additional information about products.

5. Questions specific to Internet adverse event reporting

FDA regulations require the submission of postmarketing adverse event reports.

For drugs, adverse event reporting obligations are described for approved new drug applications (NDAs), abbreviated new drug applications (ANDAs), and prescription drugs marketed without an approved application under §§ 310.305, 314.80, and 314.98 (21 CFR 310.305, 314.80, and 314.98, respectively). For new animal drugs, adverse event reporting obligations are described for approved new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) under § 514.80. Licensed manufacturers that hold biological license applications (BLAs) are also subject to adverse event reporting requirements under § 600.80 (21 CFR 600.80). These regulations cover requirements for submission of individual case safety reports on either an expedited basis (i.e., 15-day "Alert reports") or on a less frequent (periodic) basis, as specified in the regulations.

Nonprescription (over-the-counter or OTC) drugs marketed without an approved application also have reporting obligations under the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Public Law 109-462). Under this act, reports of serious adverse events associated with OTC products must be submitted to FDA within 15 days.

FDA's Medical Device Reporting (MDR) regulation, 21 CFR part 803, requires medical device manufacturers to identify and monitor significant adverse events involving their medical devices. The regulation requires manufacturers of medical devices to report device-related deaths, serious injuries, and malfunctions to FDA whenever they become aware of information that reasonably suggests that a reportable event occurred (i.e., one of their devices has or may have caused or contributed to the event).

The expectation is that entities responsible for reporting will promptly review all adverse event information received or otherwise obtained, which potentially includes information from the Internet and social media tools. According to FDA's March 2001 draft guidance for industry entitled "Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines" (available at <http://www.fda.gov/downloads/Biologics/BloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Vaccines/ucm092257.pdf>), adverse experience information that is submitted via the Internet to an entity with postmarketing reporting obligations under §§ 310.305, 314.80, and 600.80 should be reported to FDA if there is knowledge of the four basic elements for submission of an individual case safety report (see section IV.B in the draft guidance). The draft guidance also states that those entities should review any Internet sites sponsored by them for adverse experience information, but are not responsible for reviewing any Internet sites that they do not sponsor; however, if they become aware of an adverse experience on an Internet site that they do not sponsor, they should review the adverse experience and determine if it should be reported to FDA. For OTC products, the July 2009 guidance for industry entitled "Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application" (available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm171672.pdf>) lists the Internet as an example of a means for a reporter to convey adverse event information associated with an OTC product to the responsible person (i.e., "manufacturer, packer, or distributor whose name \* \* \* appears on the label of an OTC drug marketed in the United States without an approved application").

With the increasing use of Web-based technology by manufacturers of FDA-regulated medical products, health care systems, and patients, and the continual emergence of different types of Web-based media, FDA is interested in hearing the views of the public on the following topics related to Web-based media:

- How are entities with postmarketing reporting responsibilities and other stakeholders using the Internet and social media tools with regard to monitoring adverse event information about their products?

- How is adverse event information from these sources being received, reviewed, and processed?
- What challenges are presented in handling adverse event information from these sources?
- What uncertainties are there regarding what should be reported from these sources to meet FDA adverse event reporting obligations?

#### IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, accompanied by FDA senior management from the Office of the Commissioner and the Center for Drug Evaluation and Research.

Under § 15.30, the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10), subpart C). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this document acts as a waiver of those provisions as specified in § 15.30(h).

#### V. Comments

Regardless of attendance at the public hearing, interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

#### VI. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI-35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6-30, Rockville, MD 20857.

Dated: September 16, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9-22618 Filed 9-18-09; 8:45 am]

**BILLING CODE 4160-01-S**

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Disease Control and Prevention

##### Request for Information Regarding Development and Operation of a Transplantation Sentinel Network

**AGENCY:** Office of Blood, Organ and Other Tissue Safety, Division of Healthcare Quality Promotion, Center for Preparedness, Detection, and Control of Infectious Diseases, Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Request for information notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) is seeking information on development and operation of a national transplantation sentinel network (TSN) for the United States, including resources needed for management of such a system. The purpose of the network is to detect and prevent disease transmission from organ and tissue allografts recovered for transplantation.

In June 2005, the CDC announced a Request for Application (RFA) through a cooperative agreement for development of a TSN for organizations that recover, process, distribute, and implant organs and tissues. The overall goal of the system was to improve patient safety for organ and tissue recipients. The RFA objectives were to: (1) Identify and track organs and tissues to facilitate intervention following recognition of infections among recipients or donors; (2) improve communication among those in the transplant community, healthcare facilities and public health agencies concerning potential risks for transmission of infections; and (3) improve pathologic and microbiologic capabilities on cadaveric donor

specimen samples through shared resources. Development and field testing of the prototype was completed in 2008.

For this RFI, respondents are asked to describe experiences, plans or opinions regarding aspects of completing and operating a TSN system; system governance, security, and marketing; user training; and operational and infrastructure management. Responses need not address every aspect of this RFI; responses may be limited to address specific components or portions of a section. The specific sections requested for comments are: (1) Transition of Transplantation Transmission Sentinel Network (TTSN) Prototype to Full Production; (2) Standardization and Compatibility Issues; (3) Reporting Criteria; (4) Interoperability and Interfacing with Existing Data Sources; (5) System Operation and Infrastructure Management; (6) Analysis Plan including Feedback to Users; (7) Patient Health Information Privacy and Security; and (8) System Governance.

**DATES:** Comments must be submitted on or before December 11, 2009.

**ADDRESSES:** The entire TSN RFI can be accessed at [http://www.dev.cdc.gov/ncidod/dhqp/pdf/ttsn/RFI\\_TSN\\_FedRegDoc\\_9909.pdf](http://www.dev.cdc.gov/ncidod/dhqp/pdf/ttsn/RFI_TSN_FedRegDoc_9909.pdf). Electronic responses are preferred and should be sent to [TransplantRFI@cdc.gov](mailto:TransplantRFI@cdc.gov). Responses sent in hard copy format must be securely bound and sent to Debbie Seem, Office of Blood, Organ and other Tissue Safety, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention, Building 16, MS-A07, 1600 Clifton Road, NE., Atlanta, GA, 30329-4018, Telephone number: 404-639-3234, E-mail Address: [gqi4@cdc.gov](mailto:gqi4@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Each year in the United States, more than 28,000 solid organs and 2 million tissues are transplanted, including heart, lung, liver, kidneys, pancreas, intestine, bone, skin, heart valves, tendons, fascia and corneas. Donor-derived infections have been identified as a source of morbidity and mortality among both solid organ and tissue transplant recipients.

Infectious transmission identified in the past few years among solid organs have reflected a broad array of viruses, bacteria, and parasites, resulting in a high proportion of mortality amongst infected recipients; examples include HIV, hepatitis C virus (HCV), lymphocytic choriomeningitis virus, *Mycobacterium tuberculosis*, *Pseudomonas aeruginosa*, *Strongyloides spp.*, and *Trypanosoma cruzi*, the etiologic agent of Chagas Disease.

Malignancies also have been transmitted by solid organs. The Health Resources and Services Administration (HRSA) oversees the transplantation of solid organs through the Organ Procurement and Transplantation Network (OPTN) administered by the United Network for Organ Sharing (UNOS). OPTN policy requires reporting of all potential donor-derived infections to UNOS and notification of institutions that recovered organs and tissues from that donor.

For tissues, disease transmission reports are less frequent but include transmission of HCV, Group A streptococcus, *Clostridium spp.*, and *Chryseobacterium meningosepticum*. Unlike solid organs, risk of disease transmission depends on multiple factors related to the graft, including the feasibility and effectiveness of processing, which may vary according to tissue type and specific processing or manipulation procedures. The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research, regulates articles containing or consisting of human cells or tissues intended for implantation, transplantation, infusion, or transfer into a human recipient as human cells, tissues, or cellular or tissue-based products (HCT/Ps). HCT/P establishments are required to report to FDA all serious infections following graft transplantation. However, healthcare providers are not required to report adverse events, and healthcare facilities that do not perform any steps in tissue manufacture (recovery, processing, storage, labeling, packaging, distribution, or donor screening or testing) are not subject to any FDA regulation for HCT/Ps.

Because organs and tissues can come from the same donor, a TSN should provide the mechanism for standardizing allograft identifiers, tracking of organ and tissue receipt, rapid notification of and response to potential disease transmissions, benchmarking of sentinel events and integration into a national biovigilance network. Specifically utilizing these system characteristics, all relevant recovery, processing, distributing and implanting institutions could rapidly communicate when a possible disease transmission is identified. This may prevent any further use of allografts with transmissible diseases in additional recipients after a problem is recognized and allow for earlier initiation of treatment or prophylaxis of recipients, potentially resulting in reduction of transmission events or resulting morbidity and mortality.

A national TSN needs to avoid duplication of the OPTN or of FDA reporting mechanisms; however, interfacing with these existing systems is critical. A national TSN could be coordinated by CDC in collaboration with other agencies of the Department of Health and Human Services (HHS) and external partners. In addition, HHS has recognized health information technology (IT) data and exchange standards to promote the exchange of health information across the healthcare landscape. The National Health IT activities initiated by the HHS Office of the National Coordinator for Health IT (ONC) has examined incorporating reporting criteria into Electronic Health Records (EHRs) which could assist in the possible identification and reporting of public health cases and adverse events. Reporting criteria which are incorporated and utilized by EHRs may include: general and specific reporting considerations, as well as the identification of data and events that may trigger a report, additional questions that may need to be asked of reporters, and the identification of specific data that may need to be reported. Integrating these requirements into a national TSN system is vital to the long term viability of the program.

Dated: September 14, 2009.

**Tanja Popovic,**

*Chief Science Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-22658 Filed 9-18-09; 8:45 am]

**BILLING CODE P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Health Resources and Services Administration**

#### **Statement of Organization, Functions and Delegations of Authority**

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 74 FR 37718-37723 dated July 29, 2009).

This notice reflects organizational changes in the Health Resources and Services Administration. This notice renames the Office of Performance Review (RE) to the Office of Regional Operations (ORO) (RE), and changes the mission and functions of the office.

### **Chapter RE—Office of Regional Operations (RE)**

#### *Section RE-00, Mission*

Delete in its entirety and replace with the following:

The mission of ORO is to improve health care systems and America's health care safety net, increase access to quality care, reduce disparities, and advance public health by providing leadership in support of the HHS and HRSA missions, goals and strategic priorities in each region.

#### *Section RE-10, Organization*

Delete in its entirety and replace with the following:

The Office of Regional Operations (RE) is headed by the Associate Administrator who reports directly to the Administrator, Health Resources and Services Administration. The Office of Regional Operations includes the following components:

1. Office of the Associate Administrator (RE);
2. Boston Regional Division (RF12) serves Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont;
3. New York Regional Division (RF13) serves New Jersey, New York, Puerto Rico and the United States Virgin Islands;
4. Philadelphia Regional Division (RF11) serves Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia;
5. Atlanta Regional Division (RF21) serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee;
6. Chicago Regional Division (RF31) serves Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin;
7. Dallas Regional Division (RF41) serves Arkansas, Louisiana, New Mexico, Oklahoma and Texas;
8. Kansas City Regional Division (RF32) serves Iowa, Kansas, Missouri and Nebraska;
9. Denver Regional Division (RF42) serves Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming;
10. San Francisco Regional Division (RF51) serves Arizona, California, Hawaii, Nevada, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of the Marshall Islands and the Republic of Palau; and
11. Seattle Regional Division (RF52) serves Alaska, Idaho, Oregon and Washington.

#### *Section RE-20, Functions*

Delete in its entirety and replace with the following:

ORO serves as the regional component of HRSA by: (1) Providing leadership on HRSA's mission, goals, priorities and initiatives in regions, States and territories; (2) providing ongoing surveillance and analysis of health care environmental trends and making recommendations to HRSA Senior Management and other government officials on ways to improve the effectiveness of policies and programs; (3) generating and sustaining collaborative efforts between State health care leaders, HRSA managers and HRSA program resources in each State to improve public health and health care systems; (4) fostering greater alignment and collaboration between HRSA's assets, private and other public assets in communities, in pursuit of commonly held goals and improved/integrated systems of care; (5) providing assistance to grant recipients in partnership with HRSA program leaders, including: (a) the conduct of performance reviews, (b) the conduct of site visits for grantees with problems meeting program requirements or demonstrating poor operational performance, (c) the conduct of other types of site visits in support of HRSA programs, and (d) the collection and dissemination of leading/innovative practices; (6) providing support for recruitment and retention of primary health care providers in Health Professions Shortage Areas; (7) conducting other activities designed to improve access to quality care, reduce disparities and improve public health in accordance with HRSA authorities and in partnership with related public and private sector organizations; and (8) exercising line management authority related to general administrative and management functions of ORO.

#### *Section RB-30, Delegations of Authority*

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon the date of signature.

Dated: September 14, 2009.

**Mary K. Wakefield,**  
*Administrator.*

[FR Doc. E9-22602 Filed 9-18-09; 8:45 am]

BILLING CODE 4165-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA-2009-0001]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 60-day notice and request for comments; new information collection; OMB No. 1660-NEW2; FEMA Form 089-6, FRSGP Investment Justification.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the Freight Rail Security Grant Program (FRSGP).

**DATES:** Comments must be submitted on or before November 20, 2009.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at <http://www.regulations.gov> under docket ID FEMA-2009-0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash., DC 20472-3100.

(3) *Facsimile.* Submit comments to (703) 483-2999.

(4) *E-mail.* Submit comments to [FEMA-POLICY@dhs.gov](mailto:FEMA-POLICY@dhs.gov). Include docket ID FEMA-2009-0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Contact Alexander Mrazik, Program Analyst, Grant Programs Directorate,

202-786-9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646-3347 or e-mail address: [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Freight Rail Security Grant Program (FRSGP) is a component of the Transit Security Grant Program (TSGP) and funds security training for railroad frontline employees, the completion of vulnerability assessments, the development of security plans and the acquisition of GPS tracking on railroad cars within the freight rail industry. The FRSGP is one tool among a comprehensive set of measures authorized by Congress and implemented by the Administration to help strengthen the Nation's critical infrastructure against risks associated with potential terrorist attacks.

The collection of information for FRSGP is mandated by section 1513, Title XV of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (6 U.S.C. 1163) which states that the Secretary, in consultation with the Administrator of the Transportation Security Administration and other appropriate agencies or officials, is authorized to make grants to railroad carriers, the Alaska Railroad, security-sensitive materials (SSM) offerors who ship by railroad, owners of railroad cars used in the transportation of security-sensitive materials, State and local governments (for railroad passenger facilities and infrastructure not owned by Amtrak), and Amtrak for intercity passenger railroad and freight railroad security improvements. Additionally, the Secretary shall determine the requirements for recipients of grants and may award grants based upon railroad carrier vulnerability assessments and security plans.

#### Collection of Information

**Title:** FEMA FY 2009 Preparedness Grants: Freight Rail Security Grant Program (FRSGP).

**Type of Information Collection:** New information collection.

**OMB Number:** OMB No. 1660-NEW2.

**Form Titles and Numbers:** FEMA Form 089-6, FRSGP Investment Justification.

**Abstract:** The FRSGP Investment Justification is submitted with the application which provides narrative details on proposed investments. These Investment Justifications must demonstrate how proposed projects address gaps and deficiencies in current programs and capabilities and the

ability to provide enhancements consistent with the purpose of the program and guidance provided by FEMA. The data from the Investment Justification (IJ) is collected to assist decision-making at all levels, although,

it is primarily used by individual application reviewers. FRSGP application data, including the IJ, is evaluated to determine which applications are the highest-scoring and

address the program priorities stated in the grant guidance.

*Affected Public:* Business or other for-profit.

*Estimated Total Annual Burden Hours:* 9,600 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Business or other for-profit.	FRSGP Investment Justification, FEMA Form 089–6.	400	1	24 hrs.	9,600	\$30.31	\$290,976.00
Total .....	.....	400	.....	.....	9,600	.....	290,976.00

*Estimated Cost:* There is no annual reporting recordkeeping cost associated with this collection.

### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Larry Gray,**

*Director, Records Management Division,  
Office of Management, Federal Emergency  
Management Agency, Department of  
Homeland Security.*

[FR Doc. E9–22588 Filed 9–18–09; 8:45 am]

**BILLING CODE 9111–78–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW1; FEMA Form 089–7, TSP Investment Justification Template.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the Trucking Security Grant Program.

**DATES:** Comments must be submitted on or before November 20, 2009.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at <http://www.regulations.gov> under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to [FEMA-POLICY@dhs.gov](mailto:FEMA-POLICY@dhs.gov). Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Contact Alexander Mrazik, Program Analyst, Grant Programs Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Trucking Security Program (TSP) is authorized by the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329. TSP is an important part of the Administration's larger, coordinated effort to strengthen homeland security preparedness, including the security of America's critical infrastructure. TSP implements objectives addressed in a series of post-9/11 laws, strategy documents, plans, Executive Orders, and Homeland Security Presidential Directives. Of particular significance are the National Preparedness Guidelines and its associated work products, including the National Infrastructure Protection Plan and its transportation sector-specific

plans and Executive Order 13416 (Strengthening Surface Transportation Security). The National Preparedness Guidelines are an all-hazards vision regarding the Nation's four core preparedness objectives: prevent, protect against, respond to, and recover from terrorist attacks and catastrophic natural disasters.

#### Collection of Information

*Title:* FEMA FY 2009 Preparedness Grants: Trucking Security Program (TSP).

*Type of Information Collection:* New information collection.

*OMB Number:* OMB No. 1660-NEW1.

*Form Titles and Numbers:* FEMA Form 089-7, TSP Investment Justification Template.

*Abstract:* DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/State/local planning, operations, and investments. The TSP Investment Justification Template provides

narrative detail on proposed investments. This document must demonstrate how proposed projects address gaps and deficiencies in current programs and capabilities and the ability to provide enhancements consistent with the purpose of the program and guidance provided by FEMA.

*Affected Public:* Business or other for-profit.

*Estimated Total Annual Burden Hours:* 125 hours.

#### Trucking Security Program Burden Estimates

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Business or other for-profit.	TSP Investment Justification Template, FEMA Form 089-7.	25	1	5	125	\$26.60	\$3,325.00
Total .....	.....	25	.....	.....	125	.....	3,325.00

*Estimated Cost:* There is no annual reporting recordkeeping cost associated with this collection.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Larry Gray,**

*Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E9-22589 Filed 9-18-09; 8:45 am]

BILLING CODE 9111-78-P

#### DEPARTMENT OF HOMELAND SECURITY

##### U.S. Customs and Border Protection

##### Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Revision of an existing collection of information: 1651-0014.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration for Free Entry of Unaccompanied Articles (Form 3299). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before November 20, 2009, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177.

##### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Tracey Denning,

U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651-0014.

Form Number: Form 3299.

**Abstract:** The Declaration for Free Entry of Unaccompanied Articles,

Form 3299, is prepared by individuals or a broker acting as an agent for the individual, or in some cases, the CBP officer. This Form allows individuals to claim duty-free entry of personal and household effects that do not accompany the individual upon his or her arrival in the United States.

**Current Actions:** CBP is proposing to increase the burden hours associated with this collection of information as a result of increasing the estimated time per response from 10 minutes to 45 minutes for Form 3299.

**Type of Review:** Extension (with change).

**Affected Public:** Individuals, Businesses.

**Estimated Number of Respondents:** 150,000.

**Estimated Number of Annual Responses per Respondent:** 1.

**Estimated Total Annual Responses:** 150,000.

**Estimated Time per Response:** 45 minutes.

**Estimated Total Annual Burden Hours:** 112,500.

Dated: September 16, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E9-22679 Filed 9-18-09; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** General Notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2009, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

**DATES:** *Effective Date:* October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26

U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2009-27, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2009, and ending on December 31, 2009. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning January 1, 2010, and ending March 31, 2010.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1-1-99) (percent)
070174 .....	063075	6	6	
070175 .....	013176	9	9	
020176 .....	013178	7	7	
020178 .....	013180	6	6	
020180 .....	013182	12	12	
020182 .....	123182	20	20	
010183 .....	063083	16	16	
070183 .....	123184	11	11	
010185 .....	063085	13	13	
070185 .....	123185	11	11	
010186 .....	063086	10	10	
070186 .....	123186	9	9	
010187 .....	093087	9	8	
100187 .....	123187	10	9	
010188 .....	033188	11	10	
040188 .....	093088	10	9	
100188 .....	033189	11	10	
040189 .....	093089	12	11	
100189 .....	033191	11	10	
040191 .....	123191	10	9	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1–1–99) (percent)
010192 .....	033192	9	8	
040192 .....	093092	8	7	
100192 .....	063094	7	6	
070194 .....	093094	8	7	
100194 .....	033195	9	8	
040195 .....	063095	10	9	
070195 .....	033196	9	8	
040196 .....	063096	8	7	
070196 .....	033198	9	8	
040198 .....	123198	8	7	
010199 .....	033199	7	7	6
040199 .....	033100	8	8	7
040100 .....	033101	9	9	8
040101 .....	063001	8	8	7
070101 .....	123101	7	7	6
010102 .....	123102	6	6	5
010103 .....	093003	5	5	4
100103 .....	033104	4	4	3
040104 .....	063004	5	5	4
070104 .....	093004	4	4	3
100104 .....	033105	5	5	4
040105 .....	093005	6	6	5
100105 .....	063006	7	7	6
070106 .....	123107	8	8	7
010108 .....	033108	7	7	6
040108 .....	063008	6	6	5
070108 .....	093008	5	5	4
100108 .....	123108	6	6	5
010109 .....	033109	5	5	4
040109 .....	123109	4	4	3

Dated: September 16, 2009.

**Jayson P. Ahern,**

*Acting Commissioner, U.S. Customs and Border Protection.*

[FR Doc. E9–22614 Filed 9–18–09; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### U.S. Customs and Border Protection Trade Symposium 2009: “10 Year Anniversary: A Decade of Progress in Partnership”

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** Notice of Trade Symposium.

**SUMMARY:** This document announces that U.S. Customs and Border Protection (CBP) will convene its annual trade symposium, featuring panel discussions involving agency personnel, members of the trade community and other government agencies, on the agency’s role in international trade initiatives and programs. This year marks our tenth year hosting a trade symposium. Members of the international trade and transportation communities and other

interested parties are encouraged to attend.

**DATES:** Tuesday, December 8, 2009 (opening remarks and panel discussions beginning at 1 p.m. and open forum with senior management (6 p.m.–8 p.m.)). Wednesday, December 9, 2009 (panel discussions—8 a.m.–5 p.m.). Thursday, December 10, 2009 (panel discussions ending by 1 p.m.).

**ADDRESSES:** The CBP Trade Symposium will be held in a ballroom at the Walter E. Washington Convention Center, 801 Mount Vernon Place, NW., Washington, DC 20001. Upon entry into the building, check with the security guards for directions to the specific ballroom.

**FOR FURTHER INFORMATION CONTACT:** The Office of Trade Relations at (202) 344–1440, or at [tradeevents@dhs.gov](mailto:tradeevents@dhs.gov). To obtain the latest information on the Symposium and to register on-line, visit the CBP Web site at <http://www.cbp.gov>. Requests for special needs should be sent to the Office of Trade Relations at [tradeevents@dhs.gov](mailto:tradeevents@dhs.gov).

**SUPPLEMENTARY INFORMATION:** On November 30, 2000, the U.S. Customs Service (now CBP) convened its first major trade symposium to discuss the agency’s programs, strategic plans, and its mission for trade in the 21st century. This year marks our tenth year hosting a trade symposium. The agenda for the

2009 CBP Trade Symposium and the keynote speaker will be announced at a later date on the CBP Web site. The cost is \$290.00 per person, and includes all Symposium activities. Interested parties are requested to register early, as space is limited. Registration will open to the public on or about October 1, 2009. All registrations must be made on-line at the CBP Web site (<http://www.cbp.gov>) and payment will only be accepted by credit card.

Consideration will be given, in a first come, first served order, based on space availability. Due to the overwhelming interest to attend the Symposium, each company is requested to limit their company’s registrations to three participants, in order to afford equal representation from all members of the international trade community. If a company exceeds the limitation, any additional names submitted for registration will automatically be placed on the waiting list.

Hotel accommodations have been reserved at the Grand Hyatt Washington, 1000 H Street, NW., Washington, DC. A block of rooms have been reserved for Monday through Thursday, December 7–10, 2009, at the rate of U.S. \$214.00 per night. Reservations must be made directly with the hotel by November 9th on-line at <https://resweb.passkey.com/>

[Resweb.do?mode=welcome\\_gi\\_new&groupID=1500723](http://Resweb.do?mode=welcome_gi_new&groupID=1500723) or by phoning 202-637-4777.

Dated: September 16, 2009.

**Kimberly Marsho,**

*Director, Office of Trade Relations.*

[FR Doc. E9-22678 Filed 9-18-09; 8:45 am]

BILLING CODE 9111-14-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

#### Proposed Renewal of Agency Information Collection for Indian Self-Determination and Education Assistance Contracts

**AGENCIES:** Bureau of Indian Affairs, Interior and Indian Health Services, Health and Human Services.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) are proposing to submit the information collection, titled "Indian Self-Determination and Education Assistance Act Programs, 25 CFR 900" to the Office of Management and Budget for renewal. The current approval, designated by OMB Control Number 1076-0136, expires on February 28, 2010. The information is collected to process contracts, grants, or cooperative agreements for award by the BIA and the IHS, as authorized by the Indian Self-Determination and Education Assistance Act. The Department of the Interior and the Department of Health and Human Services invite you to submit comments on the proposed renewal, as described below.

**DATES:** Interested persons are invited to submit comments on or before *November 20, 2009*.

**ADDRESSES:** You may submit comments on the information collection to the Desk Officer for the Department of the Interior, by facsimile at (202) 395-5806 or you may send an e-mail to: [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov).

Please send copy of comments to Terry Parks, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4520, Washington, DC 20240, Facsimile: (202) 208-5113.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the information

collection request submission from Terry Parks, telephone: (202) 513-7625.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Representatives of the BIA and IHS seek renewal of the approvals for information collections conducted under their joint rule, 25 CFR part 900, implementing the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450 *et seq.*). The Act required the joint rule to govern how contracts and grants are awarded to Indian tribes, thereby avoiding the unnecessary burden or confusion associated with two sets of rules and information collection requirements. *See* 25 U.S.C. 450k(a)(2)(A)(ii). There is no change to the approved burden hours for this information collection.

The information requirements for this joint rule represent significant differences from other agencies in several respects. Both the BIA and IHS let contracts for multiple programs whereas other agencies usually award single grants to tribes. Under the Act, tribes are entitled to contract and may renew contracts annually, whereas other agencies provide grants on a discretionary or competitive basis.

The BIA and IHS use the information collected to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Federal agencies to administer and evaluate contract programs. Tribal governments or tribal organizations provide the information by submitting Public Law 93-638 contract or grant proposals to the appropriate Federal agency. No third party notification or public disclosure burden is associated with this collection. Approval for the collection expires on February 28, 2010.

##### II. Request for Comments

The BIA and IHS request that you send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents,

such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m. to 5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

##### III. Data

*OMB Control Number:* 1076-0136.

*Title:* Indian Self-Determination and Education Assistance Contracts, 25 CFR 900.

*Brief Description of Collection:* An Indian tribe or tribal organization may be required to respond from 1 to 12 times per year, depending upon the number of programs they contract from the BIA and IHS. Each response may vary in its length. In addition, each subpart of 25 CFR part 900 concerns different parts of the contracting process. For example, Subpart C relates to provisions of the contents for the initial contract proposal. The burden associated with this would not be used when contracts are renewed. Subpart F describes minimum standards for the management systems used by Indian tribes or tribal organizations under these contracts. Subpart G addresses the negotiability of all reporting and data requirements in the contract.

*Type of Review:* Renewal.

*Respondents:* Federally recognized Indian tribes and tribal organizations.

*Number of Respondents:* 550.

*Total Number of Responses:* 5,267.

*Estimated Time per Response:* Varies from 10 to 50 hours, with an average of 45 hours per response.

*Total Annual Burden to Respondents:* 219,792 hours.

Dated: August 19, 2009.

**Alvin Foster,**

*Chief Information Officer, Bureau of Indian Affairs.*

Dated: September 9, 2009.

**Randy Grinnell,**

*Deputy Director of Indian Health Services.*  
[FR Doc. E9-22629 Filed 9-18-09; 8:45 am]

**BILLING CODE 4310-4J-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLOROR957000-L62510000-PM000:  
HAG09-0356]

#### Filing of Plats of Survey: Oregon/ Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon 30 days from the date of this publication.

#### Willamette Meridian

##### Oregon

T. 29 S., R. 10 W., accepted August 13, 2009.

T. 27 S., R. 3 W., accepted September 4, 2009.

T. 25 S., R. 7 W., accepted September 4, 2009.

##### Washington

T. 28 N., R. 38 E., accepted September 4, 2009.

**ADDRESSES:** A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204.

Dated: September 11, 2009.

**Fred O'Ferrall,**

*Branch of Lands and Minerals Resources.*  
[FR Doc. E9-22660 Filed 9-18-09; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLWO120900-L10200000-PA0000; HAG-08-0212]

#### Proposed Supplementary Rules for Public Land in Oregon and Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed Supplementary Rules on Public Land in Oregon and Washington.

**SUMMARY:** The Bureau of Land Management (BLM) Oregon State Office is proposing supplementary rules for public lands within the States of Oregon and Washington. These supplementary rules revise existing supplementary rules and will apply to all BLM-managed lands within the States of Oregon and Washington. These revisions are necessary in order to protect public land natural resources and provide for the public's health and safety, provide needed guidance in the areas of special forest products and recreation, allow for the assessment of penalties that are commensurate with the magnitude of prohibited acts, and promote consistency between the BLM and other natural resource agencies.

**DATES:** Comments on the proposed supplementary rules must be received or postmarked by November 20, 2009, to be assured consideration. In developing final supplementary rules, the BLM is not obligated to consider comments postmarked or received in person or by electronic mail after this date.

**ADDRESSES:** You may mail or hand-deliver comments to the Office of Law Enforcement, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208. You may also comment via the Internet e-mail address: [ORWA\\_Prop\\_Rule@blm.gov](mailto:ORWA_Prop_Rule@blm.gov). Include "Attn: Law Enforcement" in your subject line.

#### FOR FURTHER INFORMATION CONTACT:

Michael Roop, Office of Law Enforcement and Security, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, telephone (503) 808-6410. Persons who use a telecommunications device for the hearing impaired (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877-8339, 24 hours a day, 7 days a week. You will receive a reply during business hours.

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Discussion of the Proposed Supplementary Rules
- III. Procedural Matters

## I. Public Comment Procedures

You may mail or hand-deliver comments to the Office of Law Enforcement, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208. You may also comment on this proposed rule via the Internet mail address: [ORWA\\_Prop\\_Rule@blm.gov](mailto:ORWA_Prop_Rule@blm.gov). Please also include your name and return address in your Internet message, and include "Attn: Law Enforcement" in your subject line.

Written comments on the proposed supplementary rules should be specific, be confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing. The BLM may not necessarily consider, or include in the Administrative Record for the final rule, comments that the BLM receives after the close of the comment period (*see DATES*), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than those listed above (*see ADDRESSES*).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 333 SW. 1st Avenue, Portland, Oregon 97204, during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except Federal holidays.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## II. Discussion of the Proposed Supplementary Rules

The BLM Oregon State Office is proposing supplementary rules for public lands that it manages within the States of Oregon and Washington. These supplementary rules revise existing supplementary rules. These revisions are necessary in order to protect public land natural resources and provide for the public's health and safety, provide needed guidance in the areas of special forest products and recreation, allow for the assessment of penalties that are commensurate with the magnitude of prohibited acts, and promote consistency between the BLM and other

natural resource agencies, including the U.S. Forest Service, National Park Service, Oregon State Parks and Recreation Department, and the State of Washington Department of Natural Resources.

These proposed supplementary rules would fill in gaps between existing supplementary rules, and provisions administered by other land management agencies. The existing supplementary rules for Oregon and Washington public lands were published in August of 2005. 70 FR 48584 (Aug. 18, 2005).

Currently, the BLM's forest and plant products program in Oregon and Washington lacks specific rules with penalties for theft or permit violations. From FY 2000 to FY 2007 the BLM in Oregon and Washington experienced 533 firewood theft and 372 forest product theft incidents. These incidents involved sales of firewood at makeshift sites located on public lands, and other unauthorized commercial uses of public lands. The proposed supplementary rules would enable the BLM to address such incidents.

Additionally, the current regulations do not adequately protect the BLM's administrative and day-use sites in Oregon and Washington. Administrative sites include fire guard stations, maintenance buildings, ware yards, residences, and outbuildings. Day-use sites include the Dean Creek Elk Viewing Site, interpretive pull-outs, picnic areas, and other sites improved for public use during daylight hours. The proposed supplementary rules would prohibit unauthorized entry and overnight use of administrative and day-use sites.

Supplementary rules are also necessary to address the Juniper Dunes Off-Highway Vehicle/All Terrain Vehicle (OHV/ATV) area. In the spring of 2007, the BLM obtained an easement for public access to the Juniper Dunes OHV/ATV area in Franklin County, which is located in southeast Washington State. The BLM undertook a planning process for parking areas and an informational kiosk. At that time, BLM determined that rules were needed for the area.

The number of visitors to the Juniper Dunes OHV area has increased steadily. Since the 1980s, the number of unofficial, privately-owned OHV areas in southeast Washington State has decreased because many have been converted to commercial or residential purposes. Another factor has been improved public access to the Juniper Dunes due to the BLM's acquisition of an easement. The BLM has observed not only increasing numbers of visitors to the Juniper Dunes, but also increased

numbers of accidents involving OHVs. The planning process revealed a need to add to the existing safety protocols in order to reduce the incidence and severity of accidents at the Juniper Dunes.

In May 2007, the BLM posted temporary rules at the Dunes and in the Spokane BLM office. These rules were based on safety concerns, were modeled on the State of Washington's OHV/ATV regulations, and were intended to reduce conflicts with and damage to adjacent private lands. These proposed supplementary rules for the Juniper Dunes OHV/ATV area would replace the temporary rules which have successfully reduced safety issues and user/resident conflicts.

Finally, supplementary rules are necessary because the current BLM regulations do not prohibit giving false information in the course of an investigation or on an application for a permit. The wording of the proposed supplementary rule is identical to the National Park Service (36 CFR 2.32 (a)(4)), and the U.S. Forest Service (36 CFR 261.3(b)) rules.

The penalty provisions of the proposed supplementary rules are the same as the penalty provisions included in the existing supplementary rules. They are being re-proposed here to avoid any confusion about the penalties applicable violations of the proposed supplementary rules.

The supplementary rules are proposed under the authority of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1740, that apply to public lands generally. The FLPMA sets penalties at the Class A misdemeanor level. The proposed supplementary rules are also under the authority of the Taylor Grazing Act, 43 U.S.C. 315a, which sets penalties at the Infraction level (Class C misdemeanor), and the Sikes Act, 16 U.S.C. 670h(c)(5), which sets penalties at the Petty Offense level (Class B misdemeanor).

The Taylor Grazing Act applies to areas within grazing districts, leased grazing lands, and any lands that are not withdrawn from grazing, which encompasses most BLM public lands east of the Cascade Mountains in Oregon and Washington and lands in southwest Oregon. The Taylor Grazing Act directs the Secretary of the Interior to make such rules and regulations as are necessary to accomplish the purposes of the Taylor Grazing Act. These purposes include regulating the occupancy and use of public lands and preserving the land and its resources from destruction or unnecessary injury.

The Sikes Act applies to areas where the BLM—in cooperation with State

agencies and following comprehensive plans developed under 16 U.S.C. 670h 0— plans, develops, maintains, and coordinates programs for the conservation and rehabilitation of wildlife, fish, and game. This coordination occurs predominantly on public lands west of the Cascade Mountains under the Northwest Forest Plan. The FLPMA, the Taylor Grazing Act, and the Sikes Act are all cited as authorities for promulgating 43 CFR 8365.1–6, the guidance for creating supplementary rules.

### III. Procedural Matters

#### *Executive Order 12866, Regulatory Planning and Review*

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rules will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients nor do they raise novel legal or policy issues. They merely impose rules of conduct and impose other limitations on certain recreational and commercial activities on certain public lands to protect natural resources and human health and safety.

#### *National Environmental Policy Act*

The BLM has found that the proposed supplementary rules are of a procedural nature and thus are categorically excluded from environmental review under Section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.210(i). In addition, the proposed supplementary rules do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental regulations, policies, and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human

environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

#### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules should have no effect on business entities of any size. They would merely impose reasonable restrictions on certain recreational or commercial activities on public lands in order to protect natural resources and the environment, and provide for human health and safety. Therefore, the BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

The proposed supplementary rules are not a “major rule” as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of \$100 million or more, an increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose reasonable restrictions on certain recreational and illegal commercial activities on certain public lands to protect natural resources, the environment, and human health and safety.

#### *Unfunded Mandates Reform Act*

The proposed supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or Tribal governments or the private sector. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. They also specifically call for compliance with State laws and

regulations. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

#### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The proposed supplementary rules do not comprise a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule would not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

#### *Executive Order 13132, Federalism*

The proposed supplementary rules would not have a substantial, direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed supplementary rules in several instances call for compliance with State law. Therefore, in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

#### *Executive Order 12988, Civil Justice Reform*

The BLM has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

The BLM has assessed the impact of these proposed supplementary rules on Tribal trust resources, on access to sacred sites, and on treaty rights. The BLM has determined that these proposed supplementary rules would not have Tribal implications as defined by Executive Order 13175, and therefore advance consultation with Indian Tribal Governments is not required.

#### *Information Quality Act*

In developing this proposed rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554.).

#### *Executive Order 13211, Effects on the Nation's Energy Supply*

This proposed rule revises a supplementary rule in order to protect natural resources and provide for public safety. This rule has no implications under Executive Order 13211.

#### *Paperwork Reduction Act*

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

#### *Clarity of the Supplementary Rules*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed supplementary rules clearly stated?
- (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?
- (3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
- (4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?
- (5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

#### **Author**

The principal author of these proposed supplementary rules is Mike Roop, State Staff Ranger, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 CFR 8365.1–6, 43 U.S.C. 1740, 16 U.S.C. 670h(c)(5), and 43 U.S.C. 315a, the BLM Oregon/Washington State Director proposes to issue supplementary rules for public lands managed by the BLM in Oregon and Washington, to read as follows:

## Supplementary Rules for Oregon and Washington

### Definitions

**ATV/OHV:** any motor vehicle designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swamp land, or other natural terrain.

**Authorized Employee:** any employee of the Bureau of Land Management who has been designated the authority to perform the duties in these rules.

**Commercial Use:** a use or activity for which an entry or participation fee is charged or for which the primary purpose is the sale of a good or service and, in either case, regardless of whether the use or activity is intended to produce a profit.

**Damage:** to injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, or kill.

**Day Use Area:** An area that is to be utilized in the hours of daylight or within the posted hours of operation. No overnight camping is allowed.

**Forest or Plant Product:** all vegetative material that is not normally measured in board feet but can be sold or removed from public lands by means of the issuance of a contract or permit.

#### 1. Forest or Plant Products

(a) You must not cut or otherwise damage any timber, tree, other forest product or plant, either live or dead, except as authorized by written permit, special-use authorization, contract, Federal law or regulation, or with written permission from an authorized employee.

(b) You must not remove any timber, tree, other forest product or plant, either live or dead, without authorization by written permit, special-use authorization, contract, or Federal law or regulation or without written permission from an authorized employee.

(c) You must properly tag, mark, or transport any forest product or plant, either live or dead, as required by Federal or State regulation or law.

(d) You must properly fill out and have in your possession permit paperwork as required by Federal or State permit stipulations, regulation, or law.

(e) You must not violate the terms or conditions of any BLM-issued forest or plant permit.

(f) You must not dispose of, burn, or possess any type of firewood or wood pallets containing nails, screws, or other metal hardware.

(g) You must not introduce new species without authorization.

(h) You must not possess, use, or store any hay, straw, or mulch that has not

been certified as free of prohibited noxious vegetative parts and/or seeds at any time of the year. Certification must comply with the State, Regional, or Federal Weed-Free Forage Certification Standards.

#### 2. Day-Use Areas

(a) You may only enter a day use area during the posted use hours.

(b) You must not enter any day use area closed as indicated by signage.

#### 3. Commercial Use Permits

(a) You must not operate any commercial business on public lands without a permit or written permission from an authorized employee.

(b) You must not violate the terms or conditions of any BLM-issued commercial use permit.

(c) You must not conduct research projects or scientific studies without coordination with the local BLM office.

#### 4. Juniper Dunes OHV/ATV Use Area

(a) You must wear an industry approved safety helmet when operating a motorcycle or OHV/ATV on all BLM lands or lands leased by the BLM and roads within the Juniper Dunes area.

(b) You must not carry a passenger when operating a motorcycle or ATV/OHV on BLM public lands unless the ATV/OHV is designed by the manufacturer to carry a passenger.

(c) You must not operate a motorcycle or ATV/OHV without a safety flag while on BLM lands in the Juniper Dunes. All such vehicles must have a whip mast and a 6 inch x 12 inch red/orange safety flag. Flags may be of pennant, triangle, square, or rectangular shape. Safety flags must be attached within 10 inches of the tip of the whip mast with club or other flags mounted below the safety flag or on another whip. Masts must be a minimum of 6 feet in height/length or industry standard height/length.

(d) You must not operate a motorcycle or ATV/OHV without a safety flag on the Peterson Road, Juniper Road, Smith Canyon Road, and Wilderness Road. Safety flags are not required for street-legal four wheeled passenger vehicles on those roads.

(e) You must not race or drive recklessly or carelessly on Peterson Road, Juniper Road, Smith Canyon Road, or Wilderness Road.

(f) You must not use wood pallets for any type of fire on BLM public lands or roads in the Juniper Dunes area.

#### 5. Administrative Sites

(a) You must not enter or climb on any BLM buildings or structures, occupied or unoccupied, unless authorized.

(b) You must not operate or park any motorized vehicle on any closed service road, any closed BLM residential road, or any area adjacent to BLM-owned building.

(c) You must not stay or park overnight on the grounds of any BLM residential building, unless authorized.

(d) You must not enter any closed BLM residential or work area, unless authorized.

#### 6. Conduct

You must not give any false, fictitious or fraudulent report or other misleading information:

(a) to a BLM officer investigating an accident or violation of law or regulation; (b) to or an authorized employee engaged in his/her official duties; or

(c) on an application for a permit.

### Penalties

Any person who violates any of these supplementary rules, on public lands in grazing districts (*see* 43 U.S.C. 315a) or on public lands leased for grazing under 43 U.S.C. 315m, may be tried before a United States Magistrate and fined no more than \$500.00. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Any person who violates any of these supplementary rules, on public lands subject to a conservation and rehabilitation program implemented by the Secretary of the Interior under 16 U.S.C. 670g *et seq.* (Sikes Act), may be tried before a United States Magistrate and fined no more than \$500.00 or imprisoned for no more than six months or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360-7, any person who violates any of these supplementary rules on public lands may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

**Edward W. Shepard,**

*State Director, Oregon/Washington.*

[FR Doc. E9-22608 Filed 9-18-09; 8:45 am]

BILLING CODE 4310-33-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-460-461 (Final)]

**In the Matter of Ni-Resist Piston Inserts From Argentina and Korea; Notice of Commission Determination Not To Conduct a Portion of the Hearing in camera**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Commission determination not to close any part of the hearing to the public.

**SUMMARY:** The Commission has determined to deny the request of Karl Schmidt Unisia, Inc. ("Karl Schmidt") to conduct a portion of its hearing in the above-captioned investigations scheduled for September 17, 2009 *in camera*. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)).

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202-205-3087. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** Karl Schmidt's request to conduct a portion of the hearing *in camera* did not satisfy the requirements of Commission rule 207.24(d) because Karl Schmidt did not identify specific issues it intended to discuss in a closed hearing, nor did it indicate why it could not present its arguments and testimony in a public session. Karl Schmidt's request also incorrectly assumed that it could present *in camera* testimony from corporate witnesses who had not entered the administrative protective order (APO) and that it could make its entire presentation *in camera*. Moreover, the Commission took into account that Karl Schmidt asked that the hearing be held *in camera*, "with only counsel granted APO permission present throughout." This would exclude Petitioner's counsel, who is not subject to the APO, from hearing Respondent's arguments. Consequently, in light of the circumstances of these investigations, the Commission has concluded that it will be able to assess adequately all arguments raised by Karl Schmidt without resorting to the extraordinary measure of an *in camera* hearing. Accordingly, the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. See 19 CFR 201.36(c)(1).

**Authority:** This notice is provided pursuant to Commission Rule 201.35(b) (19 CFR 201.35(b)).

Issued: September 16, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. E9-22582 Filed 9-18-09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 14, 2009, a proposed consent decree in *United States v. Pharmacia Corp., et al.*, Civil No. 99-63-GPM, was lodged with the United States District Court for the Southern District of Illinois.

In this action brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, the United States sought recovery of unreimbursed past response costs and prejudgment interest incurred by the United States Environmental Protection Agency for response actions at the Sauget Area 1 Sites in Sauget, St. Clair County, Illinois. In addition, defendant Solutia Inc. filed a counterclaim against the United States and cross-claims against other defendants for contribution. Under the proposed consent decree, defendants Solutia, Pharmacia Corporation, Cerro Flow Products, Inc. and ExxonMobil Oil Corporation will pay a total of \$4,350,000 to the Hazardous Substance Superfund. Defendant Village of Sauget will pay a total of \$500,000, stipulate to judgment of \$6,500,000, and remit 95% of its insurance recovery to the United States. Finally, under the proposed consent decree, the United States will pay a total of \$1,125,000.

The Department of Justice will accept comments relating to the three proposed consent decrees for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. Comments should refer to *United States v. Pharmacia Corp., et al.*, Civil No. 99-63-GPM (S.D. Ill.) and D.J. Reference No. 90-11-2-06089.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Southern

District of Illinois, Nine Executive Drive, Fairview Heights, Illinois 62208, (618) 628-3700; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 (contact Thomas J. Martin (312-886-4273)). During the comment period, the proposed consent decrees may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/ConsentDecrees.html>. Copies of the proposed consent decrees may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and D.J. Reference No. 90-11-2-06089, and enclose a check in the amount of \$10.00 for the three consent decrees (40 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9-22540 Filed 9-18-09; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Proposed Consent Decree Under the Comprehensive Environmental Response, Liability, and Compensation Act

Notice is hereby given that on September 10, 2009, the United States filed a Complaint and lodged a proposed Consent Decree in *United States v. StarLink Logistics, Inc. (SLLI)*, Case No. CV-09-4185-BZ (N.D. Cal.). The Complaint asserts claims against SLLI under CERCLA Sections 107(a)(2) and 113(g)(2), 42 U.S.C. 9607(a)(2) and 9613(g)(2), to recover past response costs and to obtain a declaratory judgment for future costs incurred by the United States Environmental Protection Agency ("EPA") at the Rhone-Poulenc/Zoecon Corp. Superfund Site located at 1990 Bay Road, East Palo Alto, San Mateo County, California ("Site").

The proposed Consent Decree resolves claims in the Complaint. Under the Decree, SLLI will pay EPA \$784,363.33 in past costs, defined as costs incurred through May 31, 2009, and all future costs incurred thereafter associated with the Wetland Operable

Unit at the Site. In addition, SLLI will pay United States Department of Interior, Fish and Wildlife Service ("DOI") \$12,764.20 in natural resource damage assessment costs incurred at the Site. In return, SLLI and its current or former affiliates Aventis Agriculture, Hoechst GmbH, Rhône-Poulenc Inc., Aventis CropScience USA Inc., and Bayer CropScience Inc., receive a covenant not to sue from the United States with respect to past response costs and future response costs at the Site under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and with respect to Natural Resource Damages under Section 107 of CERCLA, Section 1002(b)(2)(A) of Oil Pollution Act, 33 U.S.C. 2702(b)(2)(A), or Section 311(f)(4) and (5) of the Clean Water Act, 33 U.S.C. 1321(f)(4) and (5).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. StarLink Logistics, Inc.*, Case No. CV-09-4185-BZ (N.D. Cal.), D.J. Ref. 90-11-3-09436.

The Consent Decree may be examined at the U.S. Environmental Protection Agency, Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax number (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$8.75 (.25 cents per page reproduction cost) payable to the U.S. Treasury, or if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9-22510 Filed 9-18-09; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Publication of Training and Employment Guidance Letter No. 11-07, Change 2

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of publication.

**SUMMARY:** The Department of Labor's (DOL) Employment and Training Administration (ETA) is publishing Training and Employment Guidance Letter (TEGL) No. 11-07, Change 2, which rescinds TEGL No. 11-07, Change 1. The 2008 Final Rule implementing the H-2A Temporary Agricultural Worker Program, 73 FR 77109, Dec. 18, 2008 mirrors the clarification guidance of TEGL 11-07, Change 1, making the TEGL unnecessary and redundant.

**DATES:** This Notice of Publication is effective September 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information on the H-2A labor certification process governed by this publication, contact William L. Carlson, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210. Telephone: (202) 693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 14, 2007, the Department published TEGL No. 11-07, Change 1 that provided additional guidance to the State Workforce Agencies (SWAs) and ETA National Processing Centers (NPCs) involved in the processing of H-2A labor certification applications for temporary agricultural employment of foreign workers in the United States. Specifically, the clarifications provided direction to employer application filing, recruitment and housing standards.

##### Need for Rescission

On December 18, 2008 the Department published in the **Federal Register** final regulations that re-engineered the H-2A temporary agricultural workers program. These regulations went into effect on January 17, 2009. The regulations fully address employers' obligations with respect to

applications, recruitment, and housing standards making TEGL 11-07, Change 1 redundant and unnecessary. In addition, the re-engineering of the H-2A program revised the role of both the NPC and the SWAs, making portions of the TEGL inaccurate. The Department no longer requires the guidance provided in TEGL No. 11-07, Change 1 and is rescinding TEGL 11-07, Change 1.

Signed in Washington, DC this 26th day of August, 2009.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9-22508 Filed 9-18-09; 8:45 am]

**BILLING CODE 4510-FP-P**

## OFFICE OF MANAGEMENT AND BUDGET

### Draft 2009 Report to Congress on the Benefits and Costs of Federal Regulations

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Office of Management and Budget (OMB) requests comments on its Draft 2009 Report to Congress on the Benefits and Costs of Federal Regulations. The full Draft Report is available at [http://www.whitehouse.gov/omb/inforeg\\_regpol\\_reports\\_congress/](http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress/), and is divided into four chapters. Chapter I examines the benefits and costs of major Federal regulations issued in fiscal year 2008 and summarizes the benefits and costs of major regulations issued between September 1998 and 2008. It also discusses regulatory impacts on State, local, and tribal governments, small business, wages, and economic growth. Chapter II examines trends in regulation since OMB began to compile benefit and cost estimates records in 1981. Chapter III provides an update on implementation of the Information Quality Act. Chapter IV summarizes agency compliance with the Unfunded Mandates Reform Act.

**DATES:** To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by 45 days after publication.

**ADDRESSES:** Submit comments by one of the following methods:

- <http://www.regulations.gov>: Direct comments to Docket ID OMB-2009-0017.
- Fax: (202) 395-7285.

• *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Darcel D. Gayle, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503. We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft report be electronically submitted.

All comments submitted in response to this notice will be made available to the public, including by posting them on OMB's Web site. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means OMB will not know your identity or contact information unless you provide it in the body of your comment.

#### FOR FURTHER INFORMATION CONTACT:

Darcel D. Gayle, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395-3084.

**SUPPLEMENTARY INFORMATION:** Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Benefits and Costs of Federal Regulations. Specifically, section 624 of the FY 2001 Treasury and General Government Appropriations Act, also known as the "Regulatory Right-to-Know Act," (the Act) requires OMB to submit a report on the benefits and costs of Federal regulations together with recommendation for reform. The Act states that the report should contain estimates of the benefits and costs of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth. The Act also states that the report should go through notice and comment and peer review.

**Kevin F. Neyland,**

*Deputy Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. E9-22606 Filed 9-18-09; 8:45 am]

**BILLING CODE 3110-01-P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Geosciences (1755).

*Dates:* October 14, 2009, 8:15 a.m.-5:15 p.m.

October 15, 2009, 8:30 a.m.-2 p.m.

*Place:* Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

*Type of Meeting:* Open.

*Contact Person:* Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703-292-8500.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

*Agenda:* October 14: Directorate activities and plans, SODV Briefing, Division Subcommittee Meetings, Education & Diversity Subcommittee Meeting, Meeting with the Director and Deputy Director.

October 15: Discussion of GEO International Activities, COV and Subcommittee Reports, Action Items/Planning for Spring Meeting.

Dated: September 16, 2009.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E9-22613 Filed 9-18-09; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2009-0413]

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance and Availability of Draft Regulatory Guide, DG-1225.

#### FOR FURTHER INFORMATION CONTACT:

Jerome Bettel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-1314 or e-mail to [Jerome.Bettel@nrc.gov](mailto:Jerome.Bettel@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series

was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, "Instrument Lines Penetrating the Primary Reactor Containment," is temporarily identified by its task number, DG-1225, which should be mentioned in all related correspondence. DG-1225 is proposed Revision 1 of Regulatory Guide 1.11, dated March 1971.

General Design Criterion (GDC) 55, "Reactor Coolant Pressure Boundary Penetrating Containment," and GDC 56, "Primary Containment Isolation," of Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR Part 50) require, in part, that each line that penetrates the primary reactor containment and that is part of the reactor coolant pressure boundary or connects directly to the containment atmosphere has at least one locked, closed isolation valve or one automatic valve inside and one automatic valve outside containment "unless it can be demonstrated that the containment isolation provisions for a specific class of lines, such as instrument lines, are acceptable on some other defined basis." This guide defines a basis that the staff of the NRC considers acceptable to implement GDC 55 and 56 with regard to instrument lines. This guide applies to all types of nuclear power plants.

##### II. Further Information

The NRC staff is soliciting comments on DG-1225. Comments may be accompanied by relevant information or supporting data and should mention DG-1225 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, MS TWB 05 B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

2. *E-mail comments to:*  
*nrcprep.resource@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492-3446.

Requests for technical information about DG-1225 may be directed to the NRC contact, Jerome Bettel at (301) 415-1314 or e-mail to *Jerome.Bettel@nrc.gov*.

Comments would be most helpful if received by November 16, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG-1225 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>. Electronic copies are also available in ADAMS (<http://www.nrc.gov/reading-rm/adams.html>), under Accession No. ML090970530.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4205, by fax at (301) 415-3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 14th day of September, 2009.

For the Nuclear Regulatory Commission.

**Andrea D. Valentin,**  
*Chief, Regulatory Guide Development Branch,  
 Division of Engineering, Office of Nuclear  
 Regulatory Research.*

[FR Doc. E9-22601 Filed 9-18-09; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-298; NRC-2009-0398]

### Nebraska Public Power District; Cooper Nuclear Station; Exemption

#### 1.0 Background

Nebraska Public Power District (NPPD or the licensee) is the holder of Facility

Operating License No. DPR-46 which authorizes operation of the Cooper Nuclear Station (CNS). The license provides, among other things, that the facility is subject to the rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Nemaha County, Nebraska.

#### 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, paragraph 50.54(o), requires primary reactor containments for water-cooled power reactors to be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components that penetrate the containment. Appendix J, Option B, "Performance-Based Requirements," Section III.A., "Type A Test," requires, among other things, that the overall integrated leakage rate must not exceed the allowable leakage rate (La) with margin, as specified in the Technical Specifications (TSs). The overall integrated leakage rate is defined in 10 CFR Part 50, Appendix J as "the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system." This includes the contribution through the four main steam (MS) lines and the MS inboard drain line (penetration X-8). The MS Pathway includes leakage from the MS line penetrations plus the MS inboard drain line.

Option B, Section III.B of 10 CFR Part 50, Appendix J, "Type B and C Tests," requires, among other things, that the sum of the leakage rates at accident pressure of Type B tests and pathway leakage rates from Type C tests be less than the performance criterion (La) with margin, as specified in the TSs.

By application dated October 13, 2008, as supplemented by letters dated April 8, May 29, June 12, and September 1, 2009, the licensee requested exemption from Option B, Section III.A requirements in order to permit exclusion of MS Pathway leakage from the overall integrated leak rate test measurement. The licensee also requested exemption from Option B, Section III.B requirements in order to permit exclusion of the MS Pathway leakage contributions from the sum of the leakage rates from Type B and Type C tests. The licensee's application included a license amendment request

to revise the radiological assessment calculation methodology for the design basis loss-of-coolant accident at CNS through application of the alternative source term, in accordance with the provisions of 10 CFR 50.67 and 50.90, and to revise the TSs accordingly.

The NRC previously granted a license amendment (Amendment No. 226, dated October 31, 2006) and an exemption (letter to licensee dated October 30, 2006) from (1) Option B, Section III.A requirements in order to permit exclusion of MS isolation valve (MSIV) leakage from the overall integrated leakage rate measured when performing a Type A test, and (2) Option B, Section III.B requirements in order to permit exclusion of the MSIV leakage from the combined leakage rate of the penetrations and valves subject to Type B and Type C tests. The only difference in the current exemption request is the inclusion of the leakage contribution from the MS inboard drain line with the MSIV leakage in the MS Pathway.

The MS leakage effluent has a different pathway to the environment, when compared to a typical containment penetration. It is not directed into the secondary containment and filtered through the standby gas treatment system as is other containment leakage. Instead, the MS leakage is collected and treated via an alternative leakage treatment (ALT) path having different mitigation characteristics.

In performing accident analyses, it is appropriate to group various leakage effluents according to the treatment they receive before being released to the environment (e.g., from MS pathways). The proposed exemption would more appropriately permit ALT pathway leakage to be independently grouped with its unique leakage limits. In this manner, the CNS containment leakage testing program will be more consistent with the limiting assumptions used in the associated accident consequence analyses.

The licensee has analyzed the MS Pathway leakage separately from the overall containment integrated leakage, local leakage across pressure retaining, leakage limiting boundaries, and containment isolation valve leakage in its dose consequence analyses. Specifically, the alternative source term design-basis accident analyses use the MS piping, MS drain lines, and main condenser as an alternate means for MS Pathway leakage treatment. The dose consequences were found to be within the acceptance criteria of 10 CFR 50.67, "Accident source term," and the guidance of NRC Regulatory Guide

1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," dated July 2000.

Therefore, the separation of the MS Pathway from the other containment leakage pathways is warranted because a separate radiological consequence term has been provided for these pathways. The revised design-basis radiological consequences analyses address these pathways as individual factors, exclusive of the primary containment leakage. Therefore, the NRC staff finds the proposed exemption from Appendix J, to separate MS leakage from other containment leakage, to be acceptable.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee's exemption request was submitted with a license amendment request to use the alternative source term methodology for use in calculating the dose consequences of the design-basis loss-of-coolant accident analysis. The NRC staff will issue the proposed amendment in conjunction with the exemption. The exemption and amendment together would implement the alternative source term methodology. The special circumstances associated with the MS Pathway leakage testing are fully described in the licensee's application dated October 13, 2008, as supplemented by letters dated April 8, May 29, June 12, and September 1, 2009, and discussed below.

#### *Authorized by Law*

This exemption would permit exclusion of the MS Pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the sum of the leakage rates from Type B and Type C tests. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

#### *No Undue Risk to Public Health and Safety*

The underlying purposes of 10 CFR Part 50, Appendix J, Option B, Sections III.A and III.B are to ensure that containment leak-tight integrity is maintained (a) as tight as reasonably achievable and (b) sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of design-basis accidents. Based on the above, no new accident precursors are created by exclusion of the MS Pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the sum of the leakage rates from Type B and Type C tests, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

#### *Consistent With Common Defense and Security*

The proposed exemption would exclude the MS Pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the sum of the leakage rates from Type B and Type C tests. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

#### *Special Circumstances*

Special circumstances include, in part, the special circumstances defined in 10 CFR 50.12(a)(2)(ii), which states, "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The underlying purpose of 10 CFR Part 50, Appendix J, is to ensure that containment leak-tight integrity is maintained as tight as reasonably achievable and sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of design-basis accidents. The intent of the rule is not compromised by the licensee's proposed action because the containment leak rates will continue to be limited by CNS's TSs. The proposed action will appropriately permit ALT pathway leakage to be independently grouped with its unique leakage limits and maintain the accident dose analyses consequences within the acceptance criteria of 10 CFR 50.67.

Therefore, since the underlying purposes of 10 CFR Part 50, Appendix J, is achieved, the special circumstances

required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 50, Appendix J, Option B, Sections III.A and III.B exist.

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants NPPD an exemption (1) from the requirements of 10 CFR Part 50, Appendix J, Option B, Section III.A, to allow exclusion of the MS Pathway leakage from the overall integrated leakage rate measured when performing a Type A test; and (2) from the requirements of 10 CFR Part 50, Appendix J, Option B, Section III.B, to allow exclusion of the MS Pathway leakage from the combined leakage rate of all penetrations and valves subject to Type B and C tests for CNS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (74 FR 47030; September 14, 2009).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of September 2009.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E9-22600 Filed 9-18-09; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 19-20, 2009. A sample of agenda items to be discussed during the public session includes: (1) International Commission on Radiological Protection (ICRP) Publication 103 subcommittee report and discussion; (2) update on permanent prostate brachytherapy medical events; (3) update on results from the Society of Nuclear Medicine

(SNM) on the medical isotope shortage; (4) new security regulations in 10 Code of Federal Regulations (CFR) part 37; (5) potential changes to 10 CFR part 35; (6) medical uses of radium-223; (7) information on the regulatory responsibilities of the U.S. Food and Drug Administration; (8) summary of the enforcement process and enforcement actions against medical licensees; and (9) medical-related events. A copy of the agenda will be available at <http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda> or by e-mailing Ms. Ashley Cockerham at the contact information below.

**Purpose:** Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

**Date and Time for Closed Session:** October 19, 2009, from 8 a.m. to 10 a.m. This session will be closed so that ACMUI can review and discuss evaluations, receive annual training, and discuss internal Committee business.

**Date and Time for Open Sessions:** October 19, 2009, from 10:15 a.m. to 4:45 p.m. and October 20, 2009, from 8 a.m. to 12 p.m.

**Address for Public Meeting:** U.S. Nuclear Regulatory Commission, Executive Boulevard Building (EBB01-B13/15), 6003 Executive Boulevard, Rockville, Maryland 20852.

**Public Participation:** Any member of the public who wishes to participate in the meeting should contact Ms. Cockerham using the information below.

**Contact Information:** Ashley M. Cockerham, e-mail: [ashley.cockerham@nrc.gov](mailto:ashley.cockerham@nrc.gov), telephone: (240) 888-7129.

### Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Cockerham at the contact information listed above. All submittals must be received by October 9, 2009, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript will be available on ACMUI's Web site (<http://www.nrc.gov/reading-rm/doc-collections/acmui/tr/>) on or about November 23, 2009. A meeting summary will be available on ACMUI's

Web site (<http://www.nrc.gov/reading-rm/doc-collections/acmui/meeting-summaries/>) on or about December 2, 2009.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Cockerham of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: September 16, 2009.

**Andrew L. Bates,**  
Advisory Committee Management Officer.  
[FR Doc. E9-22599 Filed 9-18-09; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATES:** Week of September 21, 2009.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**ADDITIONAL ITEMS TO BE CONSIDERED:**

**Week of September 21, 2009**

*Tuesday, September 22, 2009*

9:25 a.m. Affirmation Session (Public Meeting) (Tentative). b. Final Rule Related to Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (10 CFR 50.61a) (RIN 3150-A101) (Tentative).

This meeting will be Webcast live at the Web address—<http://www.nrc.gov>.

\* \* \* \* \*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Rochelle Baval, (301) 415-1651.

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the

transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at [rohn.brown@nrc.gov](mailto:rohn.brown@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an e-mail to [darlene.wright@nrc.gov](mailto:darlene.wright@nrc.gov).

Dated: September 15, 2009.

**Rochelle C. Baval,**  
Office of the Secretary.  
[FR Doc. E9-22775 Filed 9-17-09; 4:15 pm]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NRC-2009-0414]

### Withdrawal of Regulatory Guide 7.2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Withdrawal of Regulatory Guide 7.2

### FOR FURTHER INFORMATION CONTACT:

Thomas J. Herrity, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-251-7447 or e-mail to [Thomas.Herrity@nrc.gov](mailto:Thomas.Herrity@nrc.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 7.2, "Packaging and Transportation of Radioactively Contaminated Biological Materials." Regulatory Guide 7.2 was published in June 1974. It provides guidance on meeting the Department of Transportation (DOT) requirements for Type A shipments of radioactively contaminated biological materials. It also recommends appropriate packaging and limits on the radioactive contents for any single package of this type of material, marking and labeling of packages, and limitations on storage of the packaged material before, during, and after transport. The NRC is withdrawing RG 7.2 because the guidance it provides is outdated.

The regulations for transport of hazardous materials are currently in 49 CFR Part 173 Subpart I. The DOT's

regulations have been revised several times since RG 7.2 was issued. However, neither RG 7.2 nor the American National Standards Institute (ANSI) guidance was revised to keep current with the changing regulations. The ANSI guidance referenced in this RG, which was issued as Standard N14.3–1973, “Packaging and Transportation of Radioactively Contaminated Biological Materials” by the N14.3 subcommittee, has been withdrawn.

II. Further Information

The withdrawal of RG 7.2 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this regulatory guide is neither necessary nor current. Regulatory guides may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information.

Regulatory guides are available for inspection or downloading through the NRC’s public Web site under “Regulatory Guides” in the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections>. Regulatory guides are also available for inspection at the NRC’s Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR’s mailing address is US

NRC PDR, Washington, DC 20555–0001. You can reach the PDR staff by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 14th day of September, 2009.

For the Nuclear Regulatory Commission.  
**Andrea D. Valentin,**  
*Chief, Regulatory Guide Development Branch,  
Division of Engineering, Office of Nuclear  
Regulatory Research.*  
[FR Doc. E9–22603 Filed 9–18–09; 8:45 am]  
**BILLING CODE 7590–01–P**

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

**SUMMARY:** In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of

the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB’s estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

*Repayment of Debt:* OMB 3220–0169. When the Railroad Retirement Board (RRB) determines that an overpayment of Railroad Retirement Act (RRA) or Railroad Unemployment Insurance Act (RUIA) benefits has occurred, it initiates prompt action to notify the annuitant of the overpayment and to recover the money owed the RRB. To effect payment of a debt by credit card, the RRB currently utilizes Form G–421f, Repayment by Credit Card.

The RRB proposes minor non-burden impacting changes to Form G–421f. One form is completed by each respondent. Completion is voluntary. RRB procedures pertaining to benefit overpayment determinations and the recovery of such benefits are prescribed in 20 CFR 255 and 340.

The estimate of annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Forms #(s)	Annual responses	Estimated completion time (Min)	Burden hours
G–421f .....	300	5	25
Total .....	300	.....	25

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to [Ronald.Hodapp@RRB.GOV](mailto:Ronald.Hodapp@RRB.GOV). Written

comments should be received within 60 days of this notice.

**Charles Mierzwa,**  
*Clearance Officer.*  
[FR Doc. E9–22609 Filed 9–18–09; 8:45 am]  
**BILLING CODE 7905–01–P**

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Termination of Nonmanufacturer Rule Class Waiver

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** The U.S. Small Business Administration (SBA) is terminating a

waiver of the Nonmanufacturer Rule for radio telephones based on SBA’s recent discovery of a small business manufacturer. Terminating this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or Participants in SBA’s 8(a) Business Development (BD) Program to provide the products of small business manufacturers or processors on such contracts.

**DATES:** This action is effective within 15 days after date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Edith G. Butler, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at [edith.butler@sba.gov](mailto:edith.butler@sba.gov).

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), and 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months.

The SBA defines "class of products" based on the NAICS. In addition, SBA uses PSCs to identify particular products within the NAICS code to which a waiver would apply.

SBA announced its decision to grant a Nonmanufacturer Rule class waiver for radio telephones in the **Federal Register** on July 20, 1998, 63 FR 38742. Radio telephones are identified in NAICS code 334220 and PSC 5805.

The SBA received a request on July 13, 2009 to terminate the Nonmanufacturer Rule class waiver previously granted based on the existence of a small business manufacturer for this item. SBA issued a **Federal Register** notice of its intent to terminate the class waiver on August 4, 2009, 74 FR 38675. In response to this notice, SBA did not receive nor did SBA discover additional small business manufacturers.

Therefore, SBA is terminating the Nonmanufacturer Rule class waiver previously granted for radio telephones, identified under PSC 5805, and NAICS code 334220.

Dated: September 15, 2009.

**Dean Koppel,**

*Acting Director, Office of Government Contracting.*

[FR Doc. E9-22628 Filed 9-18-09; 8:45 am]

**BILLING CODE 8025-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9064; 34-60672; File No. 265-25-02]

### Investor Advisory Committee

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting of SEC Investor Advisory Committee.

**SUMMARY:** The Securities and Exchange Commission Investor Advisory Committee is providing notice that it will hold a public meeting on Monday, October 5, 2009, in the Multipurpose Room, L-006, at the Commission's main offices, 100 F Street, NE., Washington, DC. The meeting will begin at 9 a.m. (EST) and will be open to the public, except for a period of approximately two hours when the Committee will adjourn and subcommittees will meet. The Committee meeting will be webcast on the Commission's Web site at <http://www.sec.gov>. Persons needing special accommodations to take part because of a disability should notify a contact person listed below. The public is invited to submit written statements to the Committee.

The agenda for the meeting includes: (i) A presentation by SEC staff of potential Commission initiatives; (ii) description of the composition and purpose of the Committee's subcommittees; (iii) consideration of a Committee recusal policy; (iv) reports from the Committee's subcommittees; and (v) discussion of next steps for the Committee, including regarding SEC resources.

**DATES:** Written statements should be received on or before September 28, 2009.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-25-02 on the subject line.

#### *Paper Comments*

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 265-25-02. This file number should be included on the subject line if e-mail is

used. To help us process and review your statements more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (<http://www.sec.gov/spotlight/investoradvisorycommittee.htm>). Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

#### **FOR FURTHER INFORMATION CONTACT:**

Kayla J. Gillan, Deputy Chief of Staff, Office of the Chairman, at (202) 551-2100, or Owen Donley, Chief Counsel, Office of Investor Education and Advocacy, at (202) 551-6322, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6561.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), Kayla J. Gillan, Designated Federal Officer of the Committee, has approved publication of this notice.

Dated: September 15, 2009.

**Elizabeth M. Murphy,**

*Committee Management Officer.*

[FR Doc. E9-22511 Filed 9-18-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60669; File No. SR-FINRA-2009-058]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and to Delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f)**

September 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("SEA" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 24, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to adopt a customer confirmation rule for purposes of the consolidated FINRA rulebook ("Consolidated FINRA Rulebook").<sup>3</sup> In particular, FINRA proposes to adopt FINRA Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

As part of the process of developing a new Consolidated FINRA Rulebook,<sup>4</sup> FINRA is proposing to adopt a new, consolidated customer confirmation rule. FINRA proposes to adopt FINRA

Rule 2232 (Customer Confirmations) and to delete NASD Rule 2230, NASD IM-2110-6 and NYSE Rule 409(f).<sup>5</sup>

##### **(A) Background**

NASD and NYSE Rules set forth certain basic requirements with respect to confirmations of transactions with customers.<sup>6</sup>

##### **(1) NASD Rule 2230**

NASD Rule 2230 provides that a member at or before the completion of each transaction<sup>7</sup> with a customer shall give or send to the customer written notification (*i.e.*, confirmation) disclosing: (a) whether the member is acting as a broker for the customer, as a dealer for its own account, as a broker for some other person, or as a broker for both the customer and some other person; and (b) in any case in which the member is acting as a broker for the customer or for both the customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for the customer and the date and time when the transaction took place or the fact that such information will be furnished upon the request of the customer, and the source and amount of any commission or other remuneration received or to be received by the member in connection with the transaction.

When NASD Rule 2230 was adopted in 1939<sup>8</sup> its requirements essentially duplicated those set forth in SEA Rule 15c1-4 as originally adopted by the SEC. The primary difference between the two rules was that the scope of Rule 15c1-4 was restricted to over-the-counter transactions while the NASD rule by its terms extended to all member

transactions with customers.<sup>9</sup> In 1977, the SEC rescinded Rule 15c1-4 and adopted SEA Rule 10b-10, indicating that it would apply "regardless of the manner in which a broker-dealer conducts its business or the marketplace where transactions are effected."<sup>10</sup> Since then, the SEC has amended Rule 10b-10 several times.<sup>11</sup>

##### **(2) NASD IM-2110-6**

NASD IM-2110-6 requires that any member providing a customer confirmation pursuant to SEA Rule 10b-10 in connection with any transaction in callable common stock<sup>12</sup> must disclose on the confirmation that the security is callable common stock and that a customer may contact the member for more information concerning the security. When IM-2110-6 was adopted in 2000, FINRA noted that an investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even when such stock is called away at a premium.<sup>13</sup> FINRA also stated that the ability of an issuer's common stock to be called away from a shareholder generally is a material fact to an investor. Accordingly, in adopting the IM, FINRA stated that high standards of commercial honor and just and equitable principles of trade would require members to provide the

<sup>9</sup> See Securities Exchange Act Release No. 1330 (August 4, 1937).

<sup>10</sup> See Securities Exchange Act Release No. 13508 (May 5, 1977) (Securities Confirmations: Final Rule).

<sup>11</sup> See, e.g., Securities Exchange Act Release No. 19687 (April 18, 1983), 48 FR 17583 (April 25, 1983) (Securities Confirmations: Final Rule Amendments) (requiring, among things, disclosure to investors of certain yield and call feature information in connection with transactions in debt securities); Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994) (Confirmation of Transactions: Final Rule Amendments) (generally requiring, among others, disclosure if a debt security is not rated by a nationally recognized statistical rating organization, disclosure if a broker-dealer is not a member of the Securities Investor Protection Corporation, and disclosure with respect to the availability of information with respect to transactions in collateralized debt securities); Securities Exchange Act Release No. 46471 (September 6, 2002), 67 FR 58302 (September 13, 2002) (Confirmation Requirements for Transactions of Security Futures Products Effected in Futures Accounts: Final Rule Amendments) (adopting, among others, requirements regarding transactions in securities futures products); Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS: Final Rules and Amendments) (making conforming amendments to Rule 10b-10 in connection with the adoption of Regulation NMS).

<sup>12</sup> Callable common stock is stock that is subject to being called away from a shareholder, either by the issuer or by a third party.

<sup>13</sup> See Securities Exchange Act Release No. 42761 (May 5, 2000), 65 FR 30459 (May 11, 2000) (Approval Order). See also *Notice to Members* 00-33 (May 2000) (Callable Common Stock).

<sup>3</sup> See *infra* note 4.

<sup>4</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>5</sup> For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

<sup>6</sup> The proposed rule change addresses basic customer confirmation requirements. FINRA Rules separately set forth confirmation requirements that are specific to certain types of financial products, such as the requirements set forth in FINRA Rule 2360 (adopted as part of FINRA's set of consolidated rules addressing index warrants, options and security futures). See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Approval Order).

<sup>7</sup> SEA Rule 10b-10(d)(2) states that the term "completion of the transaction" has the meaning set forth in SEA Rule 15c1-1. The Rule 15c1-1 definition of "completion of the transaction" depends on whether the customer is purchasing or selling the security, the time when payment is made and the status of the custody/delivery of the security.

<sup>8</sup> Rule 2230, formerly designated as Section 12 of the Rules of Fair Practice, was adopted as part of FINRA's original rulebook. See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939).

disclosures as set forth in the IM. FINRA further emphasized that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

### (3) NYSE Rule 409(f)

NYSE Rule 409(f) requires that confirmation of all transactions in securities admitted to dealings on the NYSE—whether over-the-counter or on an exchange—sent by members or member organizations to their customers, must clearly set forth with a suitable legend the settlement date of each transaction. The rule provides that this requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from which the orders were received. The rule further contains a general cross-reference instructing members to refer to SEA Rule 10b–10.

#### (B) Proposal

The proposed rule change would delete current NASD Rule 2230 from the FINRA rulebook and replace it with proposed FINRA Rule 2232, which would streamline and combine basic customer confirmation requirements in the NASD and NYSE Rules. Specifically:

- Proposed FINRA Rule 2232 would provide that confirmations must be given or sent to customers in conformity with the requirements of SEA Rule 10b–10. FINRA believes that incorporating by reference the requirements of Rule 10b–10, as opposed to replicating the SEC rule's detailed requirements in FINRA's rule, would make the proposed rule clear and serve the interests of regulatory efficiency.

- The proposed rule change would delete NASD IM–2110–6 from the FINRA rulebook and transfer its requirements to proposed FINRA Rule 2232. Proposed FINRA Rule 2232 would expand the coverage of those requirements to make clear that the requirement to disclose that the security is callable (and that further information is available from the member) applies to any callable equity security,<sup>14</sup> not just callable common stock. FINRA believes that, from the standpoint of investor protection, this change is necessary to ensure that the rule covers, for instance, callable preferred stock.<sup>15</sup>

- The requirement in NYSE Rule 409(f) to disclose the settlement date of the transaction would be transferred to the new rule, with two changes. First, consistent with FINRA's investor protection mission, the requirement to disclose the settlement date of the transaction would include all transactions in securities, not just NYSE-listed securities. Second, because the proposed rule would address customer confirmations, the elements of the NYSE rule addressing member-to-member communications would, consistent with the parameters of SEA Rule 10b–10, be deleted.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>16</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change would streamline and reorganize existing rules that govern basic customer confirmation requirements. Further, the proposed rule change would provide greater regulatory clarity with respect to a member's customer confirmation obligations.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

security subject to redemption before maturity, the confirmation must include a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information is available upon request.

<sup>16</sup> 15 U.S.C. 78o–3(b)(6).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–FINRA–2009–058 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days

<sup>14</sup> Exchange Act Section 3(a)(11) defines the term "equity security" to include, among others, "any stock or similar security."

<sup>15</sup> FINRA notes that SEA Rule 10b–10(a)(4) requires that, in the case of any transaction in a debt

between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-058 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-22513 Filed 9-18-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60664; File No. SR-NYSEArca-2009-81]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Its Schedule of Fees and Charges for Exchange Services

September 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 4, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule") in order to establish a fee for its Risk Management Gateway ("RMG") service. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's

principal office and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On August 28, 2009 the Exchange filed with the Securities and Exchange Commission to establish its RMG Service. RMG is a service designed to facilitate the ability of Sponsoring ETP Holders to monitor and oversee the sponsored access activity of their Sponsored Participants. NYXATS offers an order-verification service to Sponsoring ETP Holders that acts as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange's trading system for execution. When a Sponsored Participant's order passes through RMG, RMG software determines whether the order complies with order criteria that the Sponsoring ETP Holder has established for that Sponsored Participant. The order criteria reviewed by RMG may include the size of the order or the credit limit that the Sponsoring ETP Holder has established for the Sponsored Participant. This proposed rule change establishes fees for the RMG service.

The Exchange proposes to charge each RMG user Three Thousand Dollars (\$3,000) per month for the first Connection plus One Thousand Dollars (\$1,000) per month for each additional Connection.

A "Connection" is defined as up to 1000 messages per second inbound, regardless of the connection's actual capacity (*i.e.*, if the NYXT infrastructure allows any single End User connection to support more than 1000 messages per second inbound, such connection will be deemed to be multiple Connections).

The Exchange believes that the proposed fee is fair and reasonable and

reflects an equitable allocation of charges among its members.

The fee compares favorably with the fees that the Exchange's competitors charge for similar services, and is the same as the fee charged by the NYSE for its similar service.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that RMG will promote marketplace efficiency by providing security safeguards to the trading of securities by means of sponsored access and believes that the proposed fee is fair and reasonable for the reasons cited above.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-81 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEArca-2009-81 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-22515 Filed 9-18-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60661; File No. SR-NASDAQ-2009-083]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend IM-2110-4 To Reflect Changes to a Corresponding FINRA Rule

September 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 1, 2009, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule IM-2110-4 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ IM-2110-04, which bars trading ahead of research reports and which formerly corresponded to NASD IM-2110-04. In SR-FINRA-2008-054,<sup>4</sup> FINRA redesignated that rule as FINRA Rule 5280 and made substantive amendments to strengthen and simplify the rule. Notably, the amended FINRA rule requires FINRA members to establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the flow of information between research department personnel or other persons with knowledge of the content or timing of a research report, and trading department personnel. Such policies and procedures had formerly been recommended but not required. NASDAQ is adopting the new FINRA rule in full (with minor modifications to reflect limits on its jurisdiction to regulate non-NASDAQ conduct), but is continuing to designate its rule as IM-2110-04 in order to maintain unused numbers of the 5000 Series of the NASDAQ Rules for possible future use.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Securities Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (SR-FINRA-2008-054).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform NASDAQ IM-2110-04 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-083 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-083. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NASDAQ-2009-083 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-22681 Filed 9-18-09; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60666; File No. SR-CBOE-2009-062]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Dissemination of Certain Index Data**

September 14, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 28, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. The Exchange filed the proposal as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is not proposing any textual changes to the Constitution or Rules of CBOE in this filing. The Exchange is proposing to update statements that it made in Item 3 of previous filings made by the Exchange pursuant to Rule 19b-4, as described in subsection (a)(1) of Item 3 of this filing. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

#### 1. Purpose

CBOE currently disseminates values of its proprietary indexes and many of the indexes licensed by CBOE to underlie options traded on CBOE through the Options Price Reporting Authority ("OPRA"). Some of these indexes underlie options approved for listing and trading on CBOE by the Commission pursuant to filings submitted by CBOE pursuant to Rule 19b-4. In some of these filings, CBOE stated that the values of the respective indexes would be disseminated through OPRA.<sup>6</sup>

<sup>6</sup> For example, in its filing with respect to the options on the RVX, CBOE stated that "Volatility index levels [of the RVX] will be calculated by CBOE and disseminated at 15-second intervals to market information vendors via the Options Price Reporting Authority ("OPRA")." and the Commission noted this statement in its approval order for these options. See Securities Exchange Act Release No. 54643 (October 23, 2006), 71 FR 63367 (October 30, 2006) (notice of filing of File No. SR-CBOE-2006-73) and Securities Exchange Act Release No. 55425 (March 8, 2007), 72 FR 12238 (March 15, 2007) (approval of File No. SR-CBOE-2006-73). Similar statements were made in CBOE filings with respect to options on the following indexes: See Securities Exchange Act Release Nos. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (XSP); 58207 (July 22, 2008), 73 FR 43963 (July 29, 2008) (BXM); 32244 (April 29, 1993), 58 FR 27005 (May 6, 1993) (CEX); 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (VIX, VXD, VXN); 49698 (May 13, 2004), 69 FR 29152 (May 20, 2004) (VXB); 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (DJX, DXL, WDX); 39012 (September 3, 1997), 62 FR 47850 (September 11, 1997) (DTX); 39013 (September 3, 1997), 62 FR 47845 (September 11, 1997) (DUX, LDU); 41112 (February 25, 1999), 64 FR 10517 (March 4, 1999) (ECM, ZJ); 41009 (February 1, 1999), 64 FR 6410 (February 9, 1999) (DJR); 38353 (February 28, 1997), 62 FR 10888 (March 10, 1997) (NFT); 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (RUT); 48591 (October 2, 2003), 68 FR 58728 (October 10, 2003) (RUI, RUA); 51220 (February 17, 2005), 70 FR 09398 (February 25, 2005) (RMN); 32238 (April 29, 1993), 58 FR 27020 (May 6, 1993) (BIX); 32241 (April 29, 1993), 58 FR 27012 (May 6, 1993) (HCX); 32239 (April 29, 1993), 58 FR 27024 (May 6, 1993) (IUX); 32240 (April 29, 1993), 58 FR 27016 (May

Since 2006, CBOE has also disseminated values of its proprietary indexes and certain licensed indexes to major market data vendors outside of OPRA. For its proprietary and other indexes subject to a requirement that dissemination of the index values occur through OPRA pursuant to the filings noted above, the Exchange proposes to amend such requirement to permit dissemination of these values to major market data vendors solely outside of OPRA.

CBOE believes that its proposal to permit dissemination of its proprietary and certain other index values to major market data vendors solely outside of OPRA will continue to be in full compliance with the Commission's requirements with respect to the dissemination of values of indexes underlying options and CBOE's own applicable rules. CBOE Rule 24.2 requires that values of an underlying index be widely disseminated at least once every fifteen seconds if the listing of a class of options on the index is not the subject of a separate filing, and this will continue to be the case for index values that cease to be disseminated on OPRA.<sup>7</sup> CBOE Rule 24.3(a) requires that "The Exchange shall disseminate or shall assure that the current index value is disseminated after the close of business and from time-to-time on days on which transactions in index options are made on the Exchange," and this also will continue to be the case for index values that cease to be disseminated on OPRA.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and Section

6, 1993) (RLX); and 34124 (May 27 1994), 59 FR 29310 (June 6 1994) (SGX, SVX).

<sup>7</sup> See CBOE Rules 24.2(b)(10) (values of narrow-based index options must be "reported at least once every fifteen seconds during the time the index options are traded on the Exchange"), 24.2(d)(8) (values of micro narrow-based index options must be "reported at least once every fifteen seconds during the time the index options are traded on the Exchange"), and 24.2(f)(11) (the Exchange may trade options on a broad-based index pursuant to Rule 19b-4(c) of the Exchange act if " \* \* \* (11) The current index value is widely disseminated at least once every fifteen (15) seconds by the Options Price Reporting Authority, CTA/CQ, NIDS or one or more major market data vendors during the time options on the index are traded on the Exchange"). It has been pointed out to CBOE that the language of 24.2(f)(11) is not parallel to the language of 24.2(b)(10) and 24.2(d)(8), particularly in the use of the word "disseminated" in the first of these provisions and the word "reported" in the second and third of them. CBOE believes that the three provisions are intended to be substantively parallel, and CBOE intends to amend these Rules in a separate filing to conform their language by using the word "disseminate" in all three provisions.

<sup>8</sup> 15 U.S.C. 78f(b).

6(b)(5) of the Act<sup>9</sup> in particular, in that it updates statements made by the Exchange in previous filings that would either become inaccurate or impede the Exchange from modifying its dissemination of index values in a manner that is consistent with the objectives of the Act.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The long standing policy of the Commission with respect to the dissemination of values of indexes underlying index options has been to ensure the wide dissemination and wide availability of index values to market participants. This policy is reflected in CBOE Rule 24.2, which requires that values of an underlying index be widely disseminated at least once every fifteen seconds if the listing of a class of options on the index is not the subject of a separate filing.<sup>12</sup> The Exchange believes the proposed rule change is consistent both with CBOE Rule 24.2 and this Commission policy. Based on the foregoing, the Exchange designates this proposed rule change as

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> See *supra* note 2.

immediately effective under Rule 19b-4(f)(6)<sup>13</sup> of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-062 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-062. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2009-062 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-22684 Filed 9-18-09; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60665; File No. SR-CBOE-2009-052]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Related to the Hybrid Matching Algorithms**

September 14, 2009.

On July 17, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend CBOE Rules 6.45A and 6.45B to adopt a modified participation entitlement overlay to orders executed electronically on the CBOE Hybrid System ("Hybrid System"). The proposed rule change was published for comment in the **Federal Register** on August 10, 2009.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of both rules currently provides for several different matching algorithms, including price-time and pro-rata priority matching algorithms with additional priority

overlays.<sup>4</sup> The priority overlays currently include: public customer priority, market turner priority, and participation entitlements for certain qualifying market-makers.<sup>5</sup> These overlays are optional.

The purpose of the rule filing is to adopt the "modified participation entitlement," an additional optional priority overlay for the price-time and pro-rata matching algorithms. The modified participation entitlement will operate in the same manner as the existing participation entitlement for certain qualifying market-makers; however, if at the time of execution there is one or more public customer orders resting at the execution price but none was entered first in time sequence, then the market-maker participation entitlement and public customer priority overlays would not be applied to the allocation—i.e. the allocation would revert back to the price-time or pro-rata methods. The participation entitlement for certain qualifying market-makers would therefore only be applied to the execution of an inbound order if there are no public customer orders resting on the Hybrid System at the best price or if a public customer was the first to rest interest at the best price, in which case the public customer order would have priority over the order of the market maker. This outcome is a

<sup>4</sup> Rules 6.45A and 6.45B also include the Ultimate Matching Algorithm ("UMA"). CBOE did not propose any changes to the UMA in this filing.

<sup>5</sup> Under the existing participation entitlements, the Exchange may determine to grant market-makers participation entitlements pursuant to the provisions of Rules 8.87, Participation Entitlement of DPMs and e-DPMs; 8.13, Preferred Market-Maker Program; or 8.15B, Participation Entitlement of LLMs. More than one such participation entitlement may be activated for an option class (including at different priority sequences), however in no case may more than one participation entitlement be applied on the same trade. In allocating the participation entitlement, all of the following apply: (i) To be entitled to its participation entitlement, the market-maker's order and/or quote must be at the best price on the Exchange; (ii) the market-maker may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price (if pro-rata priority is in effect, and the market-maker's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the market-maker shall not receive any further allocation of that order); (iii) in establishing the counterparties to a particular trade, the participation entitlement must first be counted against that market-maker's highest priority bids or offers; and (iv) the participation entitlement shall not be in effect unless the public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance. See Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 60420 (August 3, 2009), 74 FR 39989.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

change from how the existing participation entitlement works today.<sup>6</sup>

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The new priority overlay is the same as the current market-maker participation entitlement overlay, except that the participation entitlement will only be applied if there are no public customer orders resting at the best price or if a public customer was the first to rest interest at the best price. Otherwise, neither the current public customer priority overlay nor the market-maker participation entitlement priority overlay will be in effect. Thus, public customer orders will have priority over the orders of other market participants if they are the first orders entered at the best price; if they are not the first orders at the best price, then the order will be allocated among market participants using the underlying matching algorithm—price-time or pro-rata—both of which the Commission already has found as consistent with the Act.<sup>9</sup> The Commission therefore believes that the modified participation entitlement priority overlay is consistent with the Act.

<sup>6</sup> For example, assume the matching algorithm for an options class is established so that public customer orders have first priority, the modified participation entitlement has second priority, and any remaining balance is allocated using the pro-rata matching algorithm. If, at the time of execution, there is one or more public customer orders at the execution price but none is first in time sequence (for instance, because a market-maker quote was the first trading interest posted at the execution price), then the market-maker participation entitlement and public customer priority overlays would not be applied and the incoming order would be allocated solely on a pro-rata basis.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (Adopting CBOE Rule 6.45B).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2009-052), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-22683 Filed 9-18-09; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60668; File No. SR-BX-2009-043]

#### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Extend a Holiday for Certain Registration and Processing Fees for Associated Persons

September 14, 2009.

#### I. Introduction

On July 23, 2009, NASDAQ OMX BX, Inc. ("Exchange"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to extend a fee holiday for initial registration and processing and/or transfer and relicensing fees collected by the Exchange via Web CRD for the registration of associated persons of Exchange members. The proposed rule change was published for comment in the **Federal Register** on August 10, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange (as the Boston Stock Exchange), before its purchase by The NASDAQ OMX Group, Inc. in 2008,<sup>4</sup> had ceased the trading of equity securities in 2007.<sup>5</sup> In January 2009, when the Exchange's market center was launched, the Exchange adopted a new

set of Equity Rules, which include rules governing fees charged to members for registration of associated persons with the Exchange. Equity Rule 7003(b) sets forth the fees collected by the Exchange via the Web CRD system for initial registration and transfer or re-licensing: \$60 for each initial Form U4 filed for the registration of a representative or principal,<sup>6</sup> and \$40 for each transfer or re-licensing of a representative or principal.<sup>7</sup>

The Exchange recognized that, in connection with the resumption of equities trading, additional firms might wish to become members of the Exchange, and if so, would need to register associated persons. Similarly, additional representatives or principals of pre-existing members might wish to trade equities on the Exchange and would thus need to register with the Exchange. Therefore, the Exchange waived these initial registration and transfer or re-licensing fees from January 1, 2009 to July 1, 2009.<sup>8</sup> The Exchange proposed to extend this fee waiver period to cover the period from July 1, 2009 until October 1, 2009, to provide more time for associated persons that are new to equity trading through the Exchange to register, transfer, or re-license without incurring these costs. Registration events occurring after October 1, 2009 will be subject to the initial registration and/or transfer or re-licensing fees.<sup>9</sup>

#### III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>11</sup> in that it provides for an equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities. The fee waiver applies to initial registration, transfer,

<sup>6</sup> Rule 7003(b)(1).

<sup>7</sup> Rule 7003(b)(2).

<sup>8</sup> See Securities Exchange Act Release No. 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009).

<sup>9</sup> Rule 7003(b)(3) sets forth an annual fee of \$50 for each registered representative and principal for system processing. This annual fee was suspended on January 1, 2009 and will continue to be suspended until the Exchange submits a proposed rule change to reinstate it. See *id.* See also Notice.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 60427 (August 4, 2009), 74 FR 39986 (August 10, 2009) ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008).

<sup>5</sup> See Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (May 8, 2008).

and re-licensing fees of both representatives and principals, and therefore applies equally to all categories of associated persons who would incur fees pursuant to Rule 7003(b)(1) and (2). In addition, the Commission notes that the Exchange has been waiving these fees since January 1, 2009, and believes waiving the fees for an additional three months, retroactive from July 1, 2009 until October 1, 2009, is a reasonable extension of the fee holiday. Based on the above, the Commission believes the proposed rule change constitutes an equitable allocation of reasonable dues, fees, and other charges under Section 6(b)(4) of the Act,<sup>12</sup> and is otherwise consistent with the requirements of the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-BX-2009-043), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-22685 Filed 9-18-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60662; File No. SR-BX-2009-053]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend IM-2110-4 To Reflect Changes to a Corresponding FINRA Rule

September 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 1, 2009, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which

renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX Equity Rule IM-2110-4 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). BX will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Many of the Equity Rules adopted by BX in conjunction with its resumption of the trading of cash equities are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans

to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX IM-2110-04, which bars trading ahead of research reports and which formerly corresponded to NASD IM-2110-04. In SR-FINRA-2008-054,<sup>4</sup> FINRA redesignated that rule as FINRA Rule 5280 and made substantive amendments to strengthen and simplify the rule. Notably, the amended FINRA rule requires FINRA members to establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the flow of information between research department personnel or other persons with knowledge of the content or timing of a research report, and trading department personnel. Such policies and procedures had formerly been recommended but not required. BX is adopting the new FINRA rule in full (with minor modifications to reflect limits on its jurisdiction to regulate non-Exchange conduct), but is continuing to designate its rule as IM-2110-04 in order to maintain the 5000 Series of the BX Equity Rules for possible future use.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX Equity Rule IM-2110-04 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Securities Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (SR-FINRA-2008-054).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-053 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BX-2009-053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-BX-2009-053 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-22682 Filed 9-18-09; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60659; File No. SR-FINRA-2009-044]**

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rules 2262 (Disclosure of Control Relationship With Issuer), 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) in the Consolidated FINRA Rulebook**

September 11, 2009.

On June 29, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4

thereunder,<sup>2</sup> a proposed rule change to adopt without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as FINRA rules in the Consolidated FINRA Rulebook and to delete NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The proposed rule change would renumber NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, in the Consolidated FINRA Rulebook.

The proposed rule change was published for comment in the **Federal Register** on July 24, 2009.<sup>3</sup> FINRA filed Amendment No. 1 to the proposed rule change on September 11, 2009.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that transferring NASD Rules 2240 and 2250 into the Consolidated FINRA Rulebook as FINRA Rules 2262 and 2269 will ensure that disclosures or notifications that member firms must provide to customers in connection with certain securities transactions will continue to be made. These rules are intended to provide disclosure to a customer about certain relationships involving the member that may present a conflict of interest. The Commission believes that repealing NYSE Rules 312(f) and 321.24

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 60330 (July 17, 2009), 74 FR 36787.

<sup>4</sup> Amendment No. 1 is a technical amendment that clarifies that the proposed rule change would not change Incorporated NYSE Rule 312(h); therefore, Amendment No. 1 does not require notice and comment.

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

is appropriate because the purposes they serve are addressed by proposed FINRA Rules 2262 and 2269, other FINRA rules or Commission Rules. The Commission believes that transferring NASD Rule 3340 into the Consolidated FINRA Rulebook as FINRA Rule 5260 will ensure that members are aware that the trading and quoting conduct prohibited by this rule when a trading halt is in effect will continue to be prohibited under the new FINRA rules. The proposed rule change makes non-material changes to NASD rules that have been useful in protecting investors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-FINRA-2009-044) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-22514 Filed 9-18-09; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice 6766]

### Notice of Request for Public Comment and Submission to OMB of Proposed Collection of Information

**Title:** 30-Day Notice of Proposed Information Collection: DS-3013 and 3013-s, Application Under the Hague Convention on the Civil Aspects of International Child Abduction, OMB 1405-0076.

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- **Title of Information Collection:** Application Under the Hague Convention on the Civil Aspects of International Child Abduction.
- **OMB Control Number:** 1405-0076.
- **Type of Request:** Revision.
- **Originating Office:** CA/OCS/PRI.
- **Form Number:** DS-3013, 3013-s.
- **Respondents:** Person seeking return of, or access to, a child.
- **Estimated Number of Respondents:** 2,355.
- **Estimated Number of Responses:** 2,355.

- **Average Hours per Response:** 1 hour.
- **Total Estimated Burden:** 2,355.
- **Frequency:** On occasion.
- **Obligation to Respond:** Voluntary.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 21, 2009.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- **E-mail:**  
*oira\_submission@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- **Fax:** 202-395-5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736-9082 or at *ASKPRI@state.gov*.

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions;
- Evaluate the accuracy of our estimate of the burden of the proposed collection; including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the reporting burden on those who are to respond.

**Abstract of proposed collection:** The Application Under the Hague Convention on the Civil Aspects of International Child Abduction (DS-3013 and DS 3013-s) is used by parents or legal guardians who are asking the State Department's assistance in seeking the return of, or access to, a child or children alleged to be wrongfully removed from, or retained outside of, the child's habitual residence and currently located in another country that is also party to the Hague Convention on the Civil Aspects of International Child Abduction. The application requests information regarding the identities of the applicant, the child or children, and the person alleged to have wrongfully removed or retained the child or children. In addition, the application requires that

the applicant provide the circumstances of the alleged wrongful removal or retention, and the legal justification for the request for return or access. The State Department, as the U.S. Central Authority, uses this information to establish, if possible, the applicants' claims under the Convention; to advise applicants about available remedies under the Convention; and to provide the information necessary to the foreign Central Authority in its efforts to locate the child or children, and to facilitate return of or access to the child or children pursuant to the Convention.

**Methodology:** The completed form DS-3013 and DS 3013-s may be filled out electronically or manually and then submitted to the Office of Children's Issues by e-mail, mail, or fax.

Dated: August 4, 2009.

**Mary Ellen Hickey,**

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. E9-22638 Filed 9-18-09; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF STATE

[Public Notice 6763]

### Culturally Significant Object Imported for Exhibition Determinations: "Caravaggio's, The Supper at Emmaus"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object in the exhibition: "Caravaggio's, The Supper at Emmaus," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Art Institute of Chicago, Chicago, IL, from on or about October 8, 2009, until on or about January 31, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6467). The address is U.S. Department of State, L/PD, SA-5, 2200 C Street, NW., Suite 5H03, Washington, DC 20522-0505.

Dated: September 11, 2009.

**Maura M. Pally,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E9-22536 Filed 9-18-09; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2009-0001-N-23]

#### Notice and Request for Comments

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 6, 2009 (74 FR 32029).

**DATES:** Comments must be submitted on or before October 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493-6292), or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part

1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On July 6, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 74 FR 32029. FRA received one comment—a letter—in response to this notice.

The letter came from Mr. Freddie Simpson, President of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED). BMWED is a rail labor organization representing approximately 36,000 railroad workers who build, maintain, repair and inspect tracks, bridges, and related railroad infrastructure throughout North America. In his remarks, Mr. Simpson stated the following:

In response to the Proposed Agency Information Collection Activities; Comment Request published in the **Federal Register** on July 6, 2009, (Volume 74, Number 127, pages 32029-32030) BMWED supports the proposed study and related information collection activities. As such, BMWED respectfully requests OMB approval.

BMWED offers the following comments in support:

- The proposed collection of information is necessary for the Department to fulfill its Congressional mandate under the RSIA to conduct a track inspection time study. This information is necessary to evaluate the conditions under which visual track inspections are conducted and to develop a report to the Congress responsive to Section 403 of the RSIA.
- The collected information will have practical utility to the Secretary of Transportation and the Federal Railroad Administration (FRA) in their analysis of track inspection issues within the industry.
- The Department's estimates of burden hours and costs are reasonable.
- The methodology proposed for this information collection activity is suitable and appropriate for the study and the respondent population and will facilitate the collection of data with high utility.
- The proposed information collection activity has been designed to be minimally burdensome on respondents and the proposed information collection activity is of limited duration.

Visual track inspections conducted under 49 CFR Parts 213.233, 213.235 and 213.365 play a vital and integral role in maintaining track structural integrity and the safety of railroad operations. BMWED believes that the "Track Transportation [track inspection] Time Study, OMB Control Number: 2130-NEW, Docket No. FRA-2009-0001-N-16" is necessary to allow the Secretary to fulfill the Congressional mandate of Section 403 of the RSIA to: (1) determine whether the required

intervals of track inspections for each class of track should be amended; (2) determine whether track remedial action requirements should be amended; (3) determine whether different track inspection and repair priorities or methods should be required; and (4) determine whether the speed at which railroad track inspection vehicles operate and the scope of the territory they generally cover allow for proper inspection of the track and whether such speed and appropriate scope should be regulated by the Secretary.

FRA received no other comments in response to this notice. Accordingly, DOT announces that these information collection activities have been evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.10(a).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

**Title:** Track Transportation Time Study.

**OMB Control Number:** 2130-New.  
**Type of Request:** Regular Approval of a New Collection of Information.

**Affected Public:** Track Inspectors/Track Inspector Supervisors/Division and Chief Engineers

**Abstract:** The Rail Safety Improvement Act of 2008 (Pub. L. 110-432) calls for a track inspection time study to be performed by FRA. The information required to develop the report will be at least partially obtained through a series of information gathering surveys which are focused on various aspects of track inspection. Each survey will be customized for a particular segment of the workforce and will include track inspectors, track supervisors or roadmasters, middle management (division engineers), and senior management (chief engineers).

The purpose of the proposed study is to address four issues raised in the Rail Safety Improvement Act: (1.) Determine whether the required intervals of track inspections for each class of track should be amended; (2.) Determine whether track remedial action requirements should be amended; (3.) Determine whether different track inspection and repair priorities or methods should be required; and (4.) Determine whether the speed at which railroad track inspection vehicles operate and the scope of the territory they generally cover allow for proper inspection of the track and whether such speed and appropriate scope should be regulated by the Secretary.

*Form Number(s):* FRA F 6180.136; FRA F 6180.137.

*Annual Estimated Burden Hours:* 133 hours.

*Addressee:* Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: [oir\\_submissions@omb.eop.gov](mailto:oir_submissions@omb.eop.gov).

*Comments are invited on the following:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 14, 2009.

**Kimberly Orben,**

*Director, Office of Financial Management,  
Federal Railroad Administration.*

[FR Doc. E9–22583 Filed 9–18–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2009–0080]**

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

*Applicant:* Canadian National Railway, Southern Region, Mr. Mark Ryon, Senior Manager Signal and Communications, 17641 South Ashland Avenue, Homewood, Illinois 60430.

The Canadian National Railway (CN) seeks approval of the proposed discontinuance and removal of the traffic control system (TCS) from Milepost (MP) 8.7 to MP 11.8, on the Elsdon Subdivision, Chicago, Illinois, to include the control signals and the conversion of the power-operated switch to hand-operation at Elsdon control point, MP 8.7. TCS is to be replaced with the extension of CN Rule 520 from MP 8.7 to MP 11.8. The application includes the removal of the signals No. 1, 2, 3, and 4 at the railroad-at-grade crossing on the connection track. Railroad-at-grade signals to be replaced with gate and stop signs on connection track to govern movement over the diamond.

Nine signals, including automatic signals No. 102 and 103, are to be removed and the power-operated switch is to be converted to hand-operation. The power-operated switch provides for movement from the main track to the connection track.

The reason given for the proposed changes is that there have been no train movements on the connection track in over 5 years with any plans for future use.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral

hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2009–0080 and may be submitted by one of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on September 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9–22596 Filed 9–18–09; 8:45 am]

**BILLING CODE 4910–06–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Fifteenth Meeting: RTCA Special Committee 203/Unmanned Aircraft Systems**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 203, Unmanned Aircraft Systems.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Unmanned Aircraft Systems.

**DATES:** The meeting will be held October 13–15, 2009 from 9 a.m.–5 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036. Point of Contact: RTCA Secretariat, POC: Rudy Ruana, Telephone: 202–833–9339, E-mail: [rruana@rtca.org](mailto:rruana@rtca.org).

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203/Unmanned Aircraft Systems meeting. The agenda will include:

*October 13:*

- Opening Plenary Session.
  - Introductory Remarks and Introductions.
  - Approval of Fourteenth Plenary Summary.
- Plenary Presentations:
  - Leadership Updates.
  - Chairperson Update.
  - Designated Federal Official (DFO) Update.
  - Overview of SC–203 Terms of Reference (TOR's).
  - Work Plan Status.
  - Work Group Update.
  - Work Product(s) flow into MASPS Overview.
  - Plenary consideration of Operational Services and Environmental Definition (OSED) Product for Final Review and Comment (FRAC).
  - Overview of Product Team Breakout Sessions.
  - Closing Plenary Session.
  - Date, Place, and Time for Plenary 16.
- Plenary Adjourns.
- Product Team Breakout Sessions.
  - Requirements/Architecture Product Team.

- Operational Services and Environmental Definition (OSED) Product Team.
- Control & Communications (C&C) Product Team.
- Sense & Avoid (S&A) Product Team.

*October 14:*

- Product Team Breakout Sessions.
  - Requirements/Architecture Product Team.
  - Operational Services and Environmental Definition (OSED) Product Team.
  - Control & Communications (C&C) Product Team.
  - Sense & Avoid (S&A) Product Team.

*October 15:*

- Product Team Breakout Sessions.
  - Requirements/Architecture Product Team.
  - OSED Product Team.
  - C&C Product Team.
  - S&A Product Team.
- Product Team Back Briefs.
- Closing Plenary Session (Other Business, Date, Place, and Time for Plenary, Adjourns).

**Note:** Dress Business Casual.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the “**FOR FURTHER INFORMATION CONTACT**” section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 14, 2009.

**Francisco Estrada C.,**  
*RTCA Advisory Committee.*

[FR Doc. E9–22636 Filed 9–18–09; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****Petition for Waiver of Compliance**

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Ballard Terminal Railroad Company, LLC (Waiver Petition Docket Number FRA–2009–0029)**

The Ballard Terminal Railroad Company, LLC (BTRC) of Seattle, WA, has petitioned for a permanent waiver of compliance for one locomotive (BDTL 98) and one caboose (MSN 10056) from the requirements of the Railroad Safety Glazing Standards, Title 49 CFR part 223, which require certified glazing in all windows. BTRC operates two small freight railroads, namely 3-mile long Ballard Terminal Railroad (BDTL) since 1998, and 5-mile long Meeker Southern Railroad (MSN) since 2000, in western Washington state. BTRC states that they have been completely accident and incident free.

The subject locomotive BDTL 98 on the BDTL line is a 1940 EMC SW–1 600 hp switching locomotive whose side windows conform to Title 49 CFR 223.11 glazing requirements; however, the front and rear windows do not. The front and rear windows are glazed with ¼ inch laminated safety glass that is in good condition with no discoloration. BTRC states that this very early EMC locomotive has different window geometry from the “post war” locomotives of the same series. As such, the cost of a set of custom windows meeting FRA requirements is basically prohibitive for their small company.

The subject caboose MSN 10056 on the MSN line is an ex-BNSF all steel caboose with cupola that is used primarily as a “shoving platform.” BTRC states that when they acquired the caboose, all of the windows were covered up with sheet metal. Upon removal of the sheet steel, it was discovered that all of the windows were old and damaged such that they were nearly opaque. Due to uncertainty of spare parts and cost considerations, BTRC replaced all of them with ¼ inch laminated safety glass which does not comply with Title 49 CFR 223.13 glazing requirements. However, the installed glass remains in good condition with no discoloration.

BTRC states that they operate in a primarily agricultural area, which is a very benign environment. In 8 years, they have not experienced any rock throwing or shooting damage to the equipment. BTRC's maximum operating speed is 10 mph, and their trains average five cars in length. BTRC further states that the expense of retrofitting the subject locomotive and caboose to comply with FRA Safety Glazing Standards would impose an undue financial burden on their small company to protect against situations they do not encounter.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0029) and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC, on September 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9-22578 Filed 9-18-09; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Tri-County Metropolitan Transportation District of Oregon (Waiver Petition Docket Number FRA-2009-0072)

The Tri-County Metropolitan Transportation District of Oregon (TriMet) seeks two waivers of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR part 229, and the Use of Locomotive Horns at Public Highway-Rail Grade Crossings, 49 CFR part 222. TriMet is seeking waivers to allow the volume of locomotive horns to be lower than the minimum requirement of 96 dB(A) and to not be required to routinely sound locomotive horns when approaching public highway-rail grade crossings on a specific line segment. Specifically, TriMet is seeking: (1) A 5-year waiver from the provisions of 49 CFR 229.129(a), which require the lead locomotive to be equipped with a locomotive horn that produces a minimum sound level of 96 dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel; and (2) a permanent waiver from the provisions of 49 CFR 222.21(a) and 222.21(b)(2), which require locomotive horns to be sounded when approaching public highway-rail grade crossings, using the "long-long-short-long" pattern that begins 15 to 20 seconds before the locomotive reaches the crossing, but no further than 1/4 mile from the crossing.

TriMet is a municipal corporation that was created in 1969 for the purpose of taking over the local bus systems and providing regional transit in the Portland, OR, metropolitan area. Its district is composed of the Greater Portland area, including Multnomah, Clackamas and Washington counties. TriMet's systems include buses, light rail, and beginning in 2009, commuter rail. On February 2, 2009, TriMet began Westside Express Service (WES) operations over a 14.7-mile rail line

between Wilsonville and Beaverton. WES service uses self-propelled diesel multiple-unit rail cars. WES currently runs 32 trains per weekday. The Portland & Western Railroad (P&W) also operates four to five freight trains per day over the line. P&W operates WES trains and also dispatches the trains for both railroads. The waiver petition applies only to WES trains.

Since commencement of WES revenue service, TriMet has received numerous complaints from citizens regarding locomotive horn noise at crossings. There are 34 public highway-rail grade crossings on the rail line. Newspaper articles and correspondences from State legislators have expressed complaints and urged that TriMet take action to quiet the horns. TriMet continues to work with the local cities to find ways to lessen the impact of locomotive horns. This includes investigating and demonstrating the use of wayside horns and planning for the creation of quiet zones. The purpose of the waiver is to seek temporary relief while these remedies are put in place.

Title 49 CFR 229.129(a) reads as follows: "Each lead locomotive shall be equipped with a locomotive horn that produces a minimum sound level of 96 dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The locomotive horn shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive." TriMet is requesting a 5-year waiver of the decibel requirements. It proposes to equip WES trains with an electronic warning device that generates both a horn and bell sound that can be sounded continuously; the horn will sound at 80 dB(A) at a distance of 100 feet. The trains are also equipped with a 96 dB(A) horn that the operator will have discretion to sound in cases of emergencies or other situations. The bell will ring at a minimum of 60 dB(A) at a distance of 100 feet. When the locomotive on a WES train approaches a public highway-rail grade crossing, the horn on the lead locomotive will begin to sound at 80 dB(A) in the required long-long-short-long blast pattern at least 15 seconds (but no more than 20 seconds) before the locomotive enters the crossing.

TriMet asserts that this will not compromise safety because an alternative procedure for equivalent safety will be in place. WES trains will sound an 80 dB(A) horn and follow the sounding procedures as provided in 49 CFR 222.21, except in the Lombard segment (see the second part of the

waiver petition). WES trains are equipped with a 96 dB(A) horn that can be used in an emergency. TriMet points out that WES trains are equipped with FRA-compliant headlights and auxiliary lights that form a triangular pattern for conspicuity to motorists. All of the public crossings are equipped with automatic warning devices consisting of flashing lights and gates, except for four crossings that do not have gates. WES and P&W trains will both sound the locomotive horns in the same pattern, thus providing a consistent warning to motorists and pedestrians. In an emergency, WES train engineers will retain the ability to sound the FRA-compliant horn of 96 dB(A). TriMet believes that these alternative audible warnings, coupled with the crossing protections and operating conditions, provide an equivalent level of safety.

Title 49 CFR 222.21(a) reads as follows: "Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing. Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together." Title 49 CFR 222.21(b)(2) reads as follows: "Except as provided in paragraphs (b)(3) and (d) of this section, or when the locomotive horn is defective and the locomotive is being moved for repair consistent with § 229.9 of this chapter, the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing. It shall not constitute a violation of this section if, acting in good faith, a locomotive engineer begins sounding the locomotive horn not more than 25 seconds before the locomotive enters the crossing, if the locomotive engineer is unable to precisely estimate the time of arrival of the train at the crossing for whatever reason."

TriMet is requesting a permanent waiver from these two subsections of 49 CFR 222.21 for trains operating on the Lombard segment. WES operates in the street for approximately 2,000 feet outside the Beaverton Transit Center (the Lombard segment). Freight trains do not operate on the Lombard segment. There are three crossings on the Lombard segment. One is equipped with crossing warning devices consisting of

bells, flashing lights, and gates. The other two crossings are equipped with traffic signals, flashing lights, and bells. The maximum train speed on the Lombard segment is 10 mph. TriMet proposes that when the lead unit on a WES train approaches a grade crossing on the Lombard segment, the bells on the lead unit will begin to sound at 60 dB(A) at least 15 seconds before the lead car enters the crossing. The bells will sound continuously, in lieu of the locomotive horn, until the last car in the WES train clears the grade crossing.

TriMet states that safety is not compromised as the alternative procedure previously described will provide an equivalent level of safety. TriMet asserts that the bell sounding procedure described, plus the fact that all three crossings are equipped with automatic warning devices, will provide the same level of safety. Furthermore, WES trains operate at a maximum of 10 mph over the Lombard segment and are equipped with a 96 dB(A) horn that may be used in an emergency.

TriMet requests expedited consideration in order to provide relief as soon as possible. There have been a large number of complaints received about the train horns. Since the establishment of quiet zones takes significant time and considerable expense, the approval of this waiver petition is the quickest source of relief.

TriMet states that it is not filing a joint waiver petition with the involved public authorities in the interest of expediency. The waiver petition includes letters of support from Washington County and the Cities of Beaverton, Tigard, and Tualatin. TriMet has also provided copies of the waiver petition to the Oregon Department of Transportation, P&W, and the City of Wilsonville, and asked that these entities provide FRA with letters of support.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0072) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on September 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9-22595 Filed 9-18-09; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### Livonia, Avon & Lakeville Railroad Corporation (Waiver Petition Docket Number FRA-2002-13250)

The Livonia, Avon & Lakeville Railroad Corporation (LAL) of Lakeville, New York, has petitioned for a permanent waiver of compliance for one business car, LAL 100 (Traveler), from the requirements of the Railroad Safety Glazing Standards, Title 49 CFR part 223.15(c), which require certified glazing in all windows and a minimum of four emergency windows. LAL purchased this business car from the Arkansas & Missouri Railroad and is the ex-Canadian National Railways business car 65. LAL indicates that the car is equipped with non-compliant glazing, is not air-conditioned and is used only about 3 or 4 times a year at speeds not exceeding 25 mph. The car operates on LAL, B&H Rail Corporation, and the Western New York & Pennsylvania Railroad lines.

LAL states that the design of the window sachets (wood) makes installation of glazing a costly item. All windows (25 total) open (up) eight inches. LAL requests that due to the prohibitive cost and little use of the car that the certified glazing requirements be waived for the business car LAL 100 (Traveler).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2002-13250) and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

- **Hand Delivery:** 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that

date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on September 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9-22579 Filed 9-18-09; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

#### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund ("the Fund") within the Department of the Treasury is soliciting comments concerning the Certification of Material Events Form. This specific information collection will capture information related to Community Development Entity (CDE)/New Markets Tax Credit material events, as well as Community Development Financial Institutions (CDFI) material events, in a single form. The revised document will provide a more comprehensive list of potential material events to inform CDEs and CDFIs of the events that need to be

reported to the CDFI Fund and will require the CDE or CDFI to affirmatively indicate, through a series of specific questions, whether or not the event will have an impact on areas of operations that are of particular concern to the CDFI Fund. This information will enable the CDFI Fund to better manage the Material Events review process and monitor the effects of Material Events on certification or compliance status.

**DATES:** Written comments should be received on or before November 20, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bob Ibanez, Financial and Program Analyst, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Written comments may also be sent by fax to (202) 622-7754, or by e-mail to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov). Please include the Subject line "Comments on the Certification of Material Events Form".

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Bob Ibanez, Financial and Program Analyst, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov), or by phone to (202) 927-6232 (this is not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

**Title:** Certification of Material Events Form.

**OMB Number:** Pending OMB Approval.

**Abstract:** This specific information collection will capture information related to Community Development Entity (CDE)/New Markets Tax Credit material events, as well as Community Development Financial Institutions (CDFI) material events, in a single form. The revised document will provide a more comprehensive list of potential material events to inform CDEs and CDFIs of the events that need to be reported to the CDFI Fund and will require the CDE or CDFI to affirmatively indicate, through a series of specific questions, whether or not the event will have an impact on areas of operations that are of particular concern to the CDFI Fund. This information will enable the CDFI Fund to better manage the Material Events review process and monitor the effects of Material Events on certification or compliance status.

**Current Actions:** Currently revising and redesigning the Certification of Material Events Form.

*Type of Review:* New Collection.

*Affected Public:* CDFIs and CDEs; including business or other for-profit institutions, non-profit entities, and State, local and Tribal entities.

*Estimated Number of Respondents:* 200.

*Estimated Annual Time Per Respondent:* .25 Hours.

*Estimated Total Annual Burden Hours:* 50 Hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- (b) the accuracy of the agency's estimate of the burden of the collection of information;
- (c) ways to enhance the quality, utility and clarity of the information to be collected;
- (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Authority:** 12 U.S.C. 4701 *et seq.*; 26 U.S.C. § 45D.

Dated: September 15, 2009.

**Donna J. Gambrell,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E9-22676 Filed 9-18-09; 8:45 am]

**BILLING CODE 4810-70-P**



# Federal Register

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**Monday,  
September 21, 2009**

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## **Part II**

## **The President**

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**Proclamation 8418—Constitution Day and  
Citizenship Day, Constitution Week, 2009**



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# Presidential Documents

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Title 3—

Proclamation 8418 of September 16, 2009

The President

**Constitution Day And Citizenship Day, Constitution Week, 2009****By the President of the United States of America****A Proclamation**

The United States Constitution has withstood the test of time for more than two centuries as our Nation's charter of government and the guarantor of our liberties. Signed in Philadelphia on September 17, 1787, this founding document reflects our core values and enshrines the truths set forth in the Declaration of Independence, that we are each endowed with certain unalienable rights. As the beneficiaries of these rights, all Americans have a solemn obligation to participate in our democracy so that it remains vibrant, strong, and responsive to the needs of our citizens.

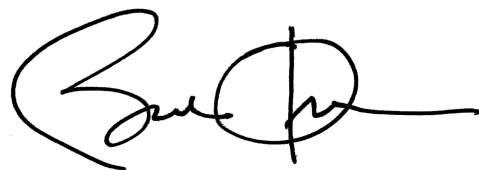
To succeed, the democracy established in our Constitution requires the active participation of its citizenry. Each of us has a responsibility to learn about our Constitution and teach younger generations about its contents and history. By fulfilling civic duties, engaging government at the local, State, and Federal level, and volunteering in our communities, individual citizens can better our country and breathe life into the freedoms established in the Constitution.

The right to participate in self-government, and the many other freedoms guaranteed by our Constitution, inspire the dreams and ambitions of many inside and outside our borders. These principles serve as a beacon of hope for Americans and those who seek new lives in the United States. Every day, we welcome new and diverse stories and heritages into the great patchwork of our Nation. United by our devotion to the Constitution and to the civic engagement it inspires, Americans remain committed to the fundamental principles established over two hundred years ago.

In remembrance of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as "Constitution Day and Citizenship Day," and by joint resolution of August 2, 1956 (36 U.S.C. 108), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as "Constitution Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 17, 2009, as Constitution Day and Citizenship Day, and September 17 through September 23, 2009, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that celebrate our Constitution and reaffirm our rights and obligations as citizens of our great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a vertical line through it.

[FR Doc. E9-22881

Filed 9-18-09; 11:15 am]

Billing code 3195-W9-P



# Federal Register

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**Monday,  
September 21, 2009**

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## **Part III**

## **The President**

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**Memorandum of September 17, 2009—  
Demonstration Grants for the  
Development, Implementation, and  
Evaluation of Alternatives to the Current  
Medical Liability System**



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# Presidential Documents

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Title 3—

Memorandum of September 17, 2009

The President

## Demonstration Grants for the Development, Implementation, and Evaluation of Alternatives to the Current Medical Liability System

### Memorandum for the Secretary of Health And Human Services

As part of my Administration's ongoing effort to reform our health care system, we have reached out to members of both political parties and listened to the concerns many have raised about the need to improve patient safety and to reform our medical liability system. Between 44,000 and 98,000 patients die each year from medical errors. Many physicians continue to struggle to pay their medical malpractice premiums, which vary tremendously by specialty and by State. The cost of insurance continues to be one of the highest practice expenses for some specialties. And although malpractice premiums do not account for a large percentage of total medical costs, many physicians report that fear of lawsuits leads them to practice defensive medicine, which may contribute to higher costs.

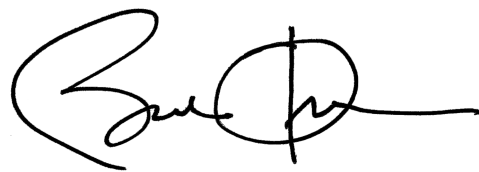
We should explore medical liability reform as one way to improve the quality of care and patient-safety practices and to reduce defensive medicine. But whatever steps we pursue, medical liability reform must be just one part of broader health insurance reform—reform that offers more security and stability to Americans who have insurance, offers insurance to Americans who lack coverage, and slows the growth of health care costs for families, businesses, and government.

In recent years, there have been calls from organizations like The Joint Commission and the Institute of Medicine to begin funding demonstration projects that can test a variety of medical liability models and determine which reforms work. These groups and others have identified several important goals and core commitments of malpractice reform that should serve as a starting point for such projects. We must put patient safety first and work to reduce preventable injuries. We must foster better communication between doctors and their patients. We must ensure that patients are compensated in a fair and timely manner for medical injuries, while also reducing the incidence of frivolous lawsuits. And we must work to reduce liability premiums.

In 1999, the Congress authorized the Agency for Healthcare Research and Quality, which is located within the Department of Health and Human Services, to support demonstration projects and to evaluate the effectiveness of projects regarding all aspects of health care, including medical liability. I hereby request that you announce, within 30 days of this memorandum, that the Department will make available demonstration grants to States, localities, and health systems for the development, implementation, and evaluation of alternatives to our current medical liability system, consistent with the goals and core commitments outlined above.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a vertical line through it.

THE WHITE HOUSE,  
WASHINGTON, *September 17, 2009.*

[FR Doc. E9-22887  
Filed 9-18-09; 11:15 am]  
Billing code 4110-60-P

# Reader Aids

## Federal Register

Vol. 74, No. 181

Monday, September 21, 2009

### CUSTOMER SERVICE AND INFORMATION

#### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

**Laws** **741-6000**

#### Presidential Documents

Executive orders and proclamations **741-6000**

**The United States Government Manual** **741-6000**

#### Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6064**

Public Laws Update Service (numbers, dates, etc.) **741-6043**

TTY for the deaf-and-hard-of-hearing **741-6086**

### ELECTRONIC RESEARCH

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**H.R. 774/P.L. 111-50**

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the "Geraldine Ferraro Post Office Building". (Aug. 19, 2009; 123 Stat. 1979)

**H.R. 987/P.L. 111-51**

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the "John Scott Challis, Jr. Post Office". (Aug. 19, 2009; 123 Stat. 1980)

**H.R. 1271/P.L. 111-52**

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the "Elijah Pat Larkins Post Office Building". (Aug. 19, 2009; 123 Stat. 1981)

**H.R. 1275/P.L. 111-53**

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

**H.R. 1397/P.L. 111-54**

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the "Caroline O'Day Post Office Building". (Aug. 19, 2009; 123 Stat. 1989)

**H.R. 2090/P.L. 111-55**

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building". (Aug. 19, 2009; 123 Stat. 1990)

**H.R. 2162/P.L. 111-56**

To designate the facility of the United States Postal Service

located at 123 11th Avenue South in Nampa, Idaho, as the "Herbert A Littleton Postal Station". (Aug. 19, 2009; 123 Stat. 1991)

**H.R. 2325/P.L. 111-57**

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the "Laredo Veterans Post Office". (Aug. 19, 2009; 123 Stat. 1992)

**H.R. 2422/P.L. 111-58**

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the "Kile G. West Post Office Building". (Aug. 19, 2009; 123 Stat. 1993)

**H.R. 2470/P.L. 111-59**

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the "Lieutenant Commander Roy H. Boehm Post Office Building". (Aug. 19, 2009; 123 Stat. 1994)

**H.R. 2938/P.L. 111-60**

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

**H.J. Res. 44/P.L. 111-61**

Recognizing the service, sacrifice, honor, and

professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

**S.J. Res. 19/P.L. 111-62**

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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